

# VCAT Directed Plans

These plans/documents are available for viewing in accordance with the direction of the Victorian Civil and Administrative Tribunal in the matter of VCAT Ref. P830/2023.

**From:** [VCAT StatPlan](#)  
**To:** [Boroondara](#)  
**Subject:** FW: Service on Council | VCAT Reference No. P830/2023 | 21-27 Queens Avenue, Hawthorn VIC 3122 (BH 221558)  
**Date:** Friday, 14 July 2023 2:26:47 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image004.png](#)  
[image005.png](#)  
[image006.png](#)  
[image007.png](#)  
[image008.png](#)  
[image009.png](#)  
[image011.png](#)  
[Council letter serving Application for Review.pdf](#)

Please save the attached and shared documents (link below) to objective. The documents relate to planning permit application no. PP21/0610.

Thanks,

**Daniel Murphy**  
Planning Appeals Coordinator  
Planning and Placemaking | Urban Living

(03) 9278 4316  
8 Inglesby Road, Camberwell, 3124 VIC  
[Daniel.Murphy@boroondara.vic.gov.au](mailto:Daniel.Murphy@boroondara.vic.gov.au)  
[www.boroondara.vic.gov.au](http://www.boroondara.vic.gov.au)



The City of Boroondara acknowledges the Wurundjeri Woi-wurrung people as the Traditional Owners and original custodians of this land, and we pay our respects to their Elders past and present.

**From:** Emma Hughes <EHughes@besthooper.com.au>  
**Sent:** Tuesday, July 11, 2023 9:24 AM  
**To:** Daniel Murphy <Daniel.Murphy@boroondara.vic.gov.au>  
**Cc:** VCAT StatPlan <vcatstatplan@boroondara.vic.gov.au>; Tania Cincotta <tcincotta@besthooper.com.au>; Eli Morrison <emorrison@besthooper.com.au>; Tala Xerri <TXerri@besthooper.com.au>  
**Subject:** Service on Council | VCAT Reference No. P830/2023 | 21-27 Queens Avenue, Hawthorn VIC 3122 (BH 221558)

Dear Sir,

On behalf of Tania Cincotta, please see correspondence **attached**.

☐ [B. Service on Council](#)

Kind regards,

# VCAT Directed Plans

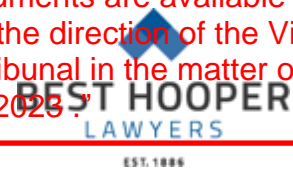
These plans/documents are available for viewing in accordance with the direction of the Victorian Civil and Administrative Tribunal in the matter of VCAT Ref.P830/2023.

**Emma Hughes** Legal Secretary  
On behalf of **Tania Cincotta**, Principal

**Direct Tel:** (03) 9691 0227 | **Tania Cincotta:** (03) 9691 0210

**Reply to:** [tcincotta@besthooper.com.au](mailto:tcincotta@besthooper.com.au)

**A** Level 12, 10 Queen Street  
Melbourne, Victoria, 3000



Victoria's Property, Planning  
and Land Development  
Advisory Law Firm

## Latest News

Celebrating Internal Promotions  
at Best Hooper Lawyers

**Warning:** To minimise the risk of cyber fraud, we will always require verbal verification of bank account details prior to any transfer. You should not transfer funds to us or any third party without first obtaining verbal verification of the correct bank account details. **Disclaimer:** The content of this e-mail is intended solely for the use of the individual or entity to whom it is addressed. If you have received this communication in error please notify the author immediately and be aware that forwarding it, copying it, or in any way disclosing its content to any other person, is strictly prohibited.

Contact: Eli Morrison  
Direct line: (03) 9691 0223  
Email: emorrison@besthooper.com.au  
Principal: Tania Cincotta  
Our Ref: TC:ELM:221558

# VCAT Directed Plans

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**BEST HOOPER**  
LAWYERS  
EST. 1886

11 July 2023

Mr Daniel Murphy  
Boroondara City Council

**By email only:** [Daniel.Murphy@boroondara.vic.gov.au](mailto:Daniel.Murphy@boroondara.vic.gov.au)  
[vcatstatplan@boroondara.vic.gov.au](mailto:vcatstatplan@boroondara.vic.gov.au)

Dear Sir,

**VCAT Reference No. P830/2023**  
**21-27 Queens Avenue, Hawthorn VIC 3122**

---

We act for the Permit Holder/Applicant in the above proceeding.

As directed by the Tribunal pursuant to order dated 29 June 2023, please find **enclosed** (via the link below), by way of service, the following:

1. Application pursuant to Section 87A(2)(a) of the *Planning and Environment Act 1987* (Vic);  
and
2. Tribunal Order dated 29 June 2023.

[B. Service on Council](#)

Should you have any queries, please do not hesitate to be in contact.

Yours faithfully  
**BEST HOOPER**

  
**Tania Cincotta**  
Principal

Enc.

APPLICATION BY A PERMIT HOLDER TO  
CANCEL OR AMEND A PERMIT

These plans/documents are available for viewing in  
conformance with the direction of the Victorian Civil and  
Administrative Tribunal in the matter of  
VCAT:Ref.P830/2023."

VCAT reference number (Office use only):

P

## WHAT YOU CAN APPLY FOR

If you are a permit holder, owner or occupier of land, or someone entitled to use or develop land, you can apply to cancel or amend a permit under section 87 or 87A of the *Planning and Environment Act 1987*.

An application to amend a permit can only be made under section 87A if the permit, or a previously amended permit, was issued at VCAT's direction.

## WHAT DO YOU WANT VCAT TO DO?

## 1. What do you want VCAT to do?

Amend a permit

2. Which section of the *Planning and Environment Act 1987* are you applying under?

Section 87A(2)(a) of the Planning and Environment Act 1987 - Application by the owner or occupier of the land concerned to cancel or amend a permit issued at the direction of the Tribunal

## WHO IS MAKING THIS APPLICATION?

If there is more than one applicant, you can add joint applicant/s at the bottom of this page.

## 3. Who is making this application?

A company

## 4. Full name of the individual, body corporate, company or authority making this application.

Nan Xin Hawthorn Pty Ltd

## 5. Are you?

- ☒ Owner of the land
- ☐ Occupier of the land
- ☒ Person entitled to use or develop the land

## 6. Do you wish to be identified as a person of Aboriginal and/or Torres Strait Islander descent?

No

## 7. What is your address?

This will be the address VCAT uses to correspond with you. It must be an address in Victoria. If you have a representative, we will send all our notices to your representative's address instead.

Street address Represented by Best Hooper Lawyers- Level 12/10 Queen Street

Suburb

Melbourne

State

VIC

Postcode

3000

# VCAT Directed Plans

Phone number (03) 9670 8951

Email tcincotta@besthooper.com.au

These plans/documents are available for viewing in accordance with the direction of the Victorian Civil and Administrative Tribunal in the matter of VCAT:Ref.P830/2023 ."

## 8. Is this a joint application?

No

## IS SOMEONE REPRESENTING YOU?

If you nominate a representative, we will send all our correspondences to your representative's address instead of your address. It must be an address in Victoria.

## 9. Is someone representing you? If No, skip to Question 11.

Yes

## 10. Details of your representative:

Organisation name (if applicable) Best Hooper Lawyers

Full name of representative Tania Cincotta

Street address Level 12, 10 Queen Street

Suburb Melbourne

State VIC

Postcode 3000

Phone number (03) 9670 8951

Email tcincotta@besthooper.com.au

## ABOUT THE PERMIT TO BE AMENDED OR CANCELLED

## 11. Address of the land the permit relates to:

21-27 Queens Avenue, Hawthorn VIC 3122

## 12. Permit number:

PP21/0610

## 13. Date the permit was issued:

25/07/2022

## 14. If relevant, date the permit was previously amended:

## 15. Name of responsible authority:

Boroondara City Council

## 16. If relevant, the name of any referral authority that was required to be given a copy of the application for the permit or application to amend the permit:

These plans/documents are available for viewing in accordance with the direction of the Victorian Civil and Administrative Tribunal in the VCAT of VCAT:Ref.P830/2023 ."

**17. Was the permit, or previously amended permit, issued at the direction of VCAT? If No, skip to Question 19.**

Yes

**18. If yes, what was the VCAT reference number and/or AUSTLII citation?**

Nan Xin Hawthorn Pty Ltd v Boroondara CC [2022] VCAT 748

**19. When does the permit expire?**

25/07/2024

**20. Do you want to cancel the permit as a condition in another permit?**

No

**21. What is the development's estimated cost (s87A applications only)?**

The estimated cost determines the application fee you must pay. For more details, go to [www.vcat.vic.gov.au/planningfees](http://www.vcat.vic.gov.au/planningfees).

Enter the cost in dollars. Do not include commas (,), nor the dollar sign (\$).

\$15,000,000.00

**22. If you are applying under section 87 of the *Planning and Environment Act 1987*, do you believe that you are adversely affected by any of the following?**

- ☐ a material mis-statement or concealment of fact about the permit application
- ☐ any substantial failure to comply with conditions of the permit
- ☐ any material mistake in the grant of the permit
- ☐ any material change in circumstances
- ☐ any failure to give notice
- ☐ any failure to comply with section 55, 61(2) or 62(1) of the *Planning and Environment Act 1987*

**23. Why do you want the permit cancelled or amended?**

Refer attached 'Grounds of Appeal' - Reference 5.1.

**24. Give the name and address of other persons who may have an interest in the outcome of this application.**

If you need more space, attach another document. You can add any attachments at the bottom of this form.

Name	Email	Address	Phone number
Victorian Rail Track Corporation	kate.kraft@victrack.com.au	GPO Box 1681 Melbourne VIC 3001	03 9619 1111
Metro Trains	Marsha.Poloz@metrotrains.com.au	GPO Box 1880 MELBOURNE VIC 3001	1800 800 007

# VCAT Directed Plans

Name	Interest
Victorian Rail Track Corporation	Condition 16 refers to the Victorian Rail Track Corporation
Metro Trains	Rail operator

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## HEARING ARRANGEMENTS

You can ask to have your case heard in the Major Cases List (section 87A only) and/or Short Cases List. You can also ask for a practice day hearing or preliminary hearing. We will decide if it is appropriate to grant your request.

Find out more about the [Major Cases List](#) and [Short Cases List](#).

**25. Are you applying for any of the following? If you select Short Cases List, skip to Question 27.**

- ☐ Major Cases List (section 87A only)  
☒ Short Cases List (section 87A only)

**26. Are you applying for a practice day hearing or preliminary hearing?**

None

If you selected practice day hearing or preliminary hearing, explain why you want this below:

**27. Tell us if there is anything else you want us to consider when we arrange a hearing.**

For example, provide details of any related current VCAT cases or ask for the hearing to take place at a specific VCAT venue.

NA

## PRESENTING YOUR CASE

**28. How much time will you need to present your entire case at a final hearing?**

Estimate the time you need to present, including time needed by any expert witnesses you will call.

1.00

hours

minutes

**29. How many expert witnesses will you call?**

0

**30. List the areas of expertise for your expert witnesses.**

NA

# VCAT Directed Plans

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## HEARING ASSISTANCE

If you are concerned about being in the same room as someone who will attend the hearing, we can make special arrangements to ensure your safety.

We can also arrange to have an interpreter for anyone who needs to attend the hearing or assist people with disability (eg. hearing loops).

These special arrangements are free.

### 31. Does anyone attending the hearing need an interpreter?

Don't know

If yes, tell us who needs an interpreter and in what language/dialect:

### 32. Does anyone attending the hearing require any other type of special assistance?

E.g. Hearing loop, wheelchair access, additional arrangements for personal safety.

Don't know

If yes, tell us who needs any other type of special assistance and what they require:

## ACKNOWLEDGEMENT

By completing this application, I understand and acknowledge that:

- ☒ To the best of my knowledge, all information provided in this application is true and correct.
- ☒ It is an offence under section 136 of the *Victorian Civil and Administrative Tribunal Act 1998* to knowingly give false or misleading information to VCAT.

Full name of person completing this form:

Tania Cincotta

Date of acknowledgement:

27/06/2023

## ATTACH THESE DOCUMENTS TO YOUR APPLICATION

You must attach the following:

- Copy of the title to the land, of not more than 14 days old
- Copy of the permit and a tracked-changed version of amendments asked for, if relevant

# VCAT Directed Plans

- Copy of the current endorsed plans, if relevant
- Copy of the proposed amended plans highlighting changes proposed, if relevant
- Copy of the permit that contains a condition requiring the cancellation or amendment of the permit, if relevant
- Copy of the VicPlan Planning Property Report that details the planning controls that apply to the land (such as zoning and overlays) and whether the land is in an area of Aboriginal Cultural Heritage Sensitivity or is identified as being bushfire prone
- If a cultural heritage management plan (CHMP) under the *Aboriginal Heritage Act 2006* is required, attach the approved CHMP
- If a cultural heritage management plan (CHMP) under the *Aboriginal Heritage Act 2006* is not required, attach a certified preliminary Aboriginal heritage test or other statement of reasons about why a CHMP is not required. This may include a copy of a due diligence statement prepared by an Aboriginal heritage consultant
- Copy of the VCAT decision relating to the permit, if relevant.

These plans/documents are available for viewing in accordance with the direction of the Victorian Civil and Administrative Tribunal in the matter of VCAT:Ref.P830/2023 .”

In addition to the above, please attach any other documents in support of your application.

Keep a copy of these documents for your records.

## Attachments to this application:

Title	File Name

## Large files

For any file larger than 128MB a sharing link is required.

Please list (by line) the name of each file that is bigger than 128MB followed by the hyperlink.

<https://besthooper.sharepoint.com/:f:/s/Planning/Et7CQ7vwK3BDq7fwT1CuKC8Bx49Q5QMk5IMNq qCdn7pZYw?e=1goyJ5>

## ABOUT VCAT FEES

VCAT fees are charged according to three levels:

- **corporate fees** for businesses and companies with a turnover of more than \$200,000 in the previous financial year, corporate entities and government agencies
- **standard fees** for individuals, not-for-profit organisations, and small businesses and companies with a turnover of less than \$200,000 in the previous financial year. Companies must provide a statutory declaration to support this claim
- **concession fees** for people who hold the Australian Government Health Care Card. You must provide a copy of your card with your application. We do not accept Pensioner Concession Cards or Department of Veteran Affairs health cards.



# VCAT Directed Plans

To find out if you need to pay an application fee and how much it costs, go to [www.vcat.vic.gov.au/fees](http://www.vcat.vic.gov.au/fees).

**Which fee category are you applying for?**

Corporate

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## FEE RELIEF

We can reduce or not charge (waive) a VCAT fee in certain circumstances.

Some people are automatically entitled to a full fee waiver. You can also apply for fee relief if paying the fee would cause you financial hardship. For more information about fee relief, go to [www.vcat.vic.gov.au/feerelief](http://www.vcat.vic.gov.au/feerelief).

If you are applying for fee relief, complete the [Fee Relief form](#) below. **If there is more than one applicant seeking a fee waiver or reduction, each applicant must fill out a separate form for your fee waiver application to be assessed.**

**Are you applying for fee relief?**

No

## WHAT HAPPENS NEXT

If you have provided your email address, you will shortly receive an email from us with instructions about next steps including how to make payment (if applicable). If you have not provided an email address and payment is required, VCAT will contact you by telephone about making payment.

After we receive your application and open a VCAT case, we will send you and all other parties an order setting out what happens next, including dates to come to VCAT. The order will tell you the venue, time and date you must go to VCAT.

The order will also have your VCAT reference number. The number starts with ‘P’ and ends with the year the application was lodged (eg. P1/2020). Quote the reference number in all correspondences and documents about your case.

Contact us if you do not hear from us within two weeks of submitting your application.

## NEED HELP WITH YOUR APPLICATION?

If you have any questions about completing this form, contact our Customer Service team:

- email [admin@vcat.vic.gov.au](mailto:admin@vcat.vic.gov.au)
- call 1300 01 8228 (1300 01 VCAT) between 9 am and 4.30 pm Monday to Friday
- go to the Victorian Civil and Administrative Tribunal, Ground Floor, 55 King Street, Melbourne VIC 3000. We are open Monday to Friday from 8.30 am to 4.30 pm.

## PRIVACY INFORMATION

For a copy of VCAT’s privacy statement, go to [www.vcat.vic.gov.au/privacy](http://www.vcat.vic.gov.au/privacy).

# VCAT Directed Plans

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BEST HOOPER  
LAWYERS

Contact: Tania Cincotta  
Direct line: 03 9691 0210  
Email: tcincotta@besthooper.com.au  
Principal: Tania Cincotta  
Our Ref: TC:ELM: 221558

27 June 2023

Principal Registrar  
Victorian Civil and Administrative Tribunal

*Via Online Portal*

Dear Principal Registrar,

**21-27 Queens Avenue, Hawthorn VIC 3122**

**Planning Permit No. PP21/0610**

**Application pursuant to section 87A of the *Planning and Environment Act 1987***

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We act for the Permit Holder/Applicant for Review, Nan Xin Hawthorn Pty Ltd, in the above matter.

In support of the application for review completed via the Tribunal's online portal pursuant to section 87A of the *Planning and Environment Act 1987* (Vic), please find **enclosed** index which sets out the materials included within the Application for Review.

We respectfully request that the proceeding be included in the Short Cases List for the following reasons:

- The proceeding can be heard within 2 hours;
- The Applicant does not intend to call any witnesses;
- The are limited parties to the proceeding; and
- A site inspection is not required.

Yours faithfully

**BEST HOOPER**



**Tania Cincotta**

Principal

*Enc.*

**Best Hooper Pty Ltd**

Level 12, 10 Queen Street  
Melbourne VIC 3000

PO Box 306  
Collins Street West VIC 8007

**T** +61 3 9670 8951

www.besthooper.com.au  
ACN 137 307 692

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Application for Review pursuant to Section 87A of the Planning and Environment Act 1987  
Planning Permit No. PP21/0610  
21-27 Queens Avenue, Hawthorn VIC 3122

## INDEX TO REFERENCES INCLUDED WITHIN APPLICATION FOR REVIEW

No.	Document	Date
<b>REFERENCE 1: PLANNING PERMIT PP21/0610</b>		
1.1	Planning Permit PP21/0610	25 July 2022
1.2	Planning Permit PP21/0610 (track changes)	21 June 2023
<b>REFERENCE 2: TITLE</b>		
2.1	Certificate of Title Volume 10988 Folio 113 [21 Queens Avenue, Hawthorn]	As produced 21 June 2023
2.2	Certificate of Title Volume 11841 Folio 781 [23 Queens Avenue, Hawthorn]	As produced 21 June 2023
<b>REFERENCE 3: VICPLAN PROPERTY REPORTS</b>		
3.1	21 Queens Avenue, Hawthorn - Vicplan Planning Property Report	As at 21 June 2023
3.2	23 Queens Avenue, Hawthorn - Vicplan Planning Property Report	As at 21 June 2023
<b>REFERENCE 4: VCAT DECISION RELATING TO PERMIT</b>		
4.1	VCAT Decision - Nan Xin Hawthorn Pty Ltd v Boroondara CC [2022] VCAT 748	7 July 2022
<b>REFERENCE 5: GROUNDS OF APPEAL</b>		
5.1	Grounds of Appeal	27 June 2023
5.2	Vic Track Letter	1 November 2021
5.3	Planning Permit No. PP16/00827	15 May 2018
5.4	Queens Avenue Developments Pty Ltd v Boroondara CC [2018] VCAT 629	26 April 2018
5.5	Public Transport Victoria referral response	9 August 2017
5.6	VCAT preliminary question decision in VCAT Ref P1758/2022	8 June 2023

## PLANNING PERMIT

# VCAT Directed Plans

These plans/documents are available for viewing in accordance with the direction of the Victorian Civil and Administrative Tribunal in the matter of BORONNDARA City of Harmony VCAT:Ref.P830/2023."

**Permit Number:** PP21/0610  
**Planning Scheme:** Boroondara Planning Scheme  
**Responsible Authority:** City of Boroondara

**ADDRESS OF THE LAND:** 21-27 Queens Avenue, Hawthorn

### THE PERMIT ALLOWS:

Construction of a 10-storey building for the use of student accommodation, ground floor retail premises and a reduction in the standard car parking requirements for the retail premises in accordance with the endorsed plans.

***This permit was issued by Order of the Victorian Civil and Administrative Tribunal dated 7<sup>th</sup> July 2022 – Application For Review No. P11937/2021.***

### THE FOLLOWING CONDITIONS APPLY TO THIS PERMIT:

#### CONDITIONS

##### Amended plans required

- 1 Before the development starts, amended plans must be submitted to the satisfaction of the Responsible Authority. When the plans are to the satisfaction of the Responsible Authority they will be endorsed and will then form part of the Permit. The plans must be drawn to scale with dimensions in an unlocked PDF, substantially in accordance with the advertised plans (VCAT Amended Plans, plot date 24/4/2022, Rev 2) prepared by Plus Architecture, but modified to show:  
*General:*
  - (a) Changes to the western edge of the terraces along the walkway in accordance with the plan prepared by Plus Architecture TP100 Revision 3 dated 20 May 2022.
  - (b) Correct the North Elevation generally in accordance with the plan prepared by Plus Architecture TP200 Revision 3 dated 20 May 2022 including a pattern to the concrete wall at ground level.
  - (c) Provision of additional communal study spaces at levels 3-6.*Materials and Finishes:*
  - (d) The Queens Avenue footpath, adjacent to the subject site, to be resurfaced with asphalt and bluestone banding with finished surface levels that generally match the existing conditions;
  - (e) The finished surface material for the ground floor front setback to consist of asphalt and bluestone bands with finished floor levels that match the resurfaced adjacent footpath;
  - (f) The application of a graffiti-resistant coating to all brick and concrete finishes on the at-grade floors facing Queens Avenue and the VicTrack land;
  - (g) Modifications to the schedule of materials and finishes to detail the proposed ground surface materials and levels for the front setback;

**Date Issued: 25 July 2022**

**Signature for the Responsible Authority:** \_\_\_\_\_

  
Daniel Murphy

**PLANNING APPEALS COORDINATOR**

- (h) A schedule of materials and finishes, including physical samples of all stone, timber finishes, concretes, brick and metal finishes. The schedule must include details of the size format that the various materials are to be applied and provide further details of the finishes; *Sustainability*;
- (i) Any modifications to the development necessary as a result of recommendations made in the ESD report required by this permit;

*Parking and accessways:*

- (j) A notation bicycle signage is to be installed and displayed in accordance with Clause 52.34-5 of the Boroondara Planning Scheme;
- (k) A Bicycle and Car Parking Management Plan in accordance with this permit;
- (l) The redundant vehicle crossover removed and the area reinstated with footpath, kerb and channel;

*Acoustic Report*

- (m) Any modifications to the proposed development that are identified in the Acoustic report required by this permit;

**Layout and uses not to be altered**

- 2 The layout of the site and the size, levels, design and location of buildings and works and the description of the uses shown on the endorsed plans must not be modified for any reason (unless the Boroondara Planning Scheme specifies that a permit is not required) without the prior written consent of the Responsible Authority.

**Student Management Plan**

- 3 Before the occupation of the building, a Student Management Plan for the site must be submitted to and approved by the Responsible Authority. The plan must not be modified without the written consent of the Responsible Authority. The Plan must cover the following points but may include other points:
  - (a) A standard lease for the student lodging rooms;
  - (b) The nature of the management of the complex and contact details of the site manager/management company;
  - (c) The means by which bicycle parking will be allocated and a register that documents allocation of these spaces;
  - (d) Rules regarding occupancy and behaviour of residents and visitors and grievance procedures;
  - (e) Emergency and evacuation procedures;
  - (f) Maintenance and cleaning schedules;
  - (g) Details of management procedures over holiday periods;
  - (h) Details of rubbish bin storage and collection;
  - (i) Any provision for short stays by parents or visitors, subject to the availability of beds.
  - (j) Details of supervision and/or security of the site.

**Date Issued: 25 July 2022**

**Signature for the Responsible Authority:**



Daniel Murphy

**PLANNING APPEALS COORDINATOR**

When approved, the Plan will be endorsed and will then form part of the permit. The use must be in accordance with the approved Student Management Plan, to the satisfaction of the Responsible Authority.

### **Bicycle and Car Parking Management Plan**

- 4 Concurrent with the submission of amended plans required by Condition 1 of this Permit, a Bicycle and Car Parking Management Plan must be submitted to and approved by the Responsible Authority.

The Plan must detail how the on-site bicycle and car parking spaces approved under this permit will be allocated and managed, and outline fees or charges associated with the use of the bicycle and car parking spaces and electric charging facilities which must not deter usage of the designated spaces by residents of the accommodation.

When approved, the Plan will be endorsed and will then form part of the permit. Management of the parking provided in association with the use must be in accordance with the approved Plan, to the satisfaction of the Responsible Authority.

### **Subdivision of student accommodation**

- 5 Any future subdivision of the student accommodation facility must show all communal facilities, including bicycle parking, student lounges, ground floor entry, study areas and laundry, as common property to be managed for the benefit of the student residents.

### **Facilities for residents only**

- 6 Any recreational facilities on the premises must only be accessible to persons who are residents or guests of the residents. It is the responsibility of the management to ensure access is restricted to persons registered to stay on the premises who hold a security pass or key to a room on the relevant date and their guests to the satisfaction of the responsible authority.

### **Acoustic report**

- 7 Prior to the endorsement of plans pursuant to condition 1 of this permit, an acoustic report prepared by a suitably qualified person must be prepared to the satisfaction of, and submitted to, the responsible authority for approval.

Once approved, the acoustic report will be endorsed and will then form part of the permit. The acoustic report must include recommendations as to how the dwellings in the development will achieve compliance with the internal noise levels contained in Standard D16 of Clause 58. Any modifications to the proposed development that are identified in that report as being necessary to achieve compliance with D16 must be shown in the plans required by condition 1 of this permit.

### **Landscape Plan**

- 8 Concurrent with the endorsement of the plans referred to in Condition 1 of this permit, a Landscape Plan to the satisfaction of the responsible authority must be submitted to and approved by the Responsible Authority. The plan must be drawn to scale with dimensions and three (3) copies provided. When endorsed, the plan will form part of the permit. The plan must be generally in accordance with the Landscape concept plan prepared by John Patrick Landscape Architects, revision A for VCAT circulated on 26 April 2022, but modified to show:
- (a) Changes in accordance with the development plans.
  - (b) Provision of hanging plants at ground level within the planters along the northern elevation that will hang down over the wall.

**Date Issued: 25 July 2022**

**Signature for the Responsible Authority:**



Daniel Murphy

**PLANNING APPEALS COORDINATOR**

**Planning Permit No.: PP21/0610**

**Address of the Land: 21-27 Queens Avenue, Hawthorn**

# VCAT Directed Plans

These plans/documents are available for viewing in accordance with the direction of the Victorian Civil and Administrative Tribunal in the matter of VCAT:Ref.P830/2023."



## **Completion of landscaping works**

- 9 Landscaping as shown on the endorsed landscape plans must be carried out and completed to the satisfaction of the Responsible Authority prior to the occupation of the development.

## **Landscaping maintenance**

- 10 All landscaping works shown on the endorsed landscape plan/s must be maintained and any dead, diseased or damaged plants replaced, all to the satisfaction of the Responsible Authority.

## **Maintenance of Buildings and Works**

- 11 All buildings and works must be maintained in good order and appearance to the satisfaction of the Responsible Authority.

## **Drainage**

- 12 The land must be drained to the satisfaction of the Responsible Authority.

## **Confirmation of architect team**

- 13 Before the development starts, the Responsible Authority must be provided with evidence to its satisfaction that Plus Architecture, or an alternative architectural firm to the satisfaction of the Responsible Authority, has been engaged as part of the ongoing consultant team to oversee the design and construction to ensure that the design quality and appearance of the approved development is realised.

## **Management Plan**

- 14 Prior to the occupation of the development, a management plan for the public pedestrian link must be prepared to the satisfaction of, and submitted to, the Responsible Authority for approval. Once approved, the management plan will be endorsed and will then form part of the permit. The management plan must include details of the times during which the link will be open to the public, and any other conditions with respect to its use. The management plan must be complied with at all times unless with the written consent of the responsible authority

## **Conditions relating to railway land**

- 15 Unless otherwise agreed in writing with Public Transport Victoria and VicTrack, windows and doors must not be placed on the title boundary with the Railway Land and no windows or doors are permitted to open beyond the Railway Land title boundary to the satisfaction of Public Transport Victoria and VicTrack.
- 16 Prior to the commencement of works, detailed construction/ engineering plans and computations for any construction or works likely to have an impact on railway operations or railway infrastructure assets are to be submitted to and approved by VicTrack and the Rail Operator. The plans must detail all excavation of the site adjacent to the railway corridor, having any impact on the rail reserve, and ensure compliance regarding building clearances to aerial power lines as per the applicable Victorian Electrical Safety Regulations.
- 17 Unless otherwise agreed in writing with VicTrack permanent or temporary soil anchors must not be installed on railway land.
- 18 Prior to commencement of works, the Rail Operator must be contacted through the email address [metrositeaccess@metrotrains.com.au](mailto:metrositeaccess@metrotrains.com.au) to obtain the Rail Operator's conditions and safety requirements for works on, over or adjacent to railway land.

**Date Issued: 25 July 2022**

**Signature for the Responsible Authority:**

Daniel Murphy

**PLANNING APPEALS COORDINATOR**

- 19 Any damage to the Rail Operator's infrastructure as a consequence of the construction works must be rectified to the satisfaction of the Rail Operator at full cost of the Permit holder.
- 20 The Planning Permit holder must take all reasonable steps to ensure that disruptions to train operation within the railway corridor are kept to a minimum during the construction of the development and are in compliance with the Rail Operators Safety and Environmental requirements within the Rail Operators construction control and indemnity agreement.
- 21 Building materials (including glass/window/ balcony treatments) likely to have an effect on train driver operations along the rail corridor must be nonreflective and avoid using red or green colour schemes.
- 22 No lighting is to be erected that throws light onto the railway tracks or which interferes with the visibility of signals and the rail lines by train drivers.
- 23 No drainage, effluent, waste, soil or other materials must enter or be directed to railway land or stored or deposited on railway land.
- 24 Entry onto railway land is at the discretion of the Rail Operator and is subject to the Rail Operator's Site Access Procedures and conditions.
- 25 The developer shall pay any Rail Operator costs required for the development documentation review or construction works due to the Permit as required by the Rail Operator.
- 26 Access to VicTrack land during construction and for maintenance purposes after completion will require permission from Metro Trains Melbourne and will be subject to both organisation's site access procedures and conditions.

#### External lighting (outdoor communal and publicly accessible areas)

- 27 Concurrent with the endorsement of the plans referred to in Condition 1 of this permit, a detailed External Lighting Plan must be prepared to the satisfaction of the Responsible Authority. Once satisfactory, such plan will be endorsed and must be implemented to the satisfaction of the Responsible Authority. The plan must provide the following details to the satisfaction of the Responsible Authority:
  - (a) Lighting within the outdoor publicly accessible areas of the site; (b) Lighting within the outdoor communal areas.When endorsed, the plan will form part of the permit.
- 28 All outdoor lighting of publicly accessible areas must be designed, baffled and located to prevent light from the site causing any detriment to the locality, to the satisfaction of the Responsible Authority.

#### Waste Management Plan

- 29 Concurrent with the submission of amended plans required by Condition 1 of this Permit, a Waste Management Plan must be prepared to the satisfaction of the Responsible Authority. Once satisfactory, such plan will be endorsed and must be implemented to the satisfaction of the Responsible Authority. The plan must be generally in accordance with the Waste Management Plan to include:
  - (a) Regular private food and garden organics (FOGO) collection; and
  - (b) Waste collection to occur outside AM and PM commuter peak times and in accordance with any other condition in this permit

Date Issued: 25 July 2022

Signature for the Responsible Authority: \_\_\_\_\_



Daniel Murphy

PLANNING APPEALS COORDINATOR

- (c) Sufficient space for communal hard waste storage so as to not have to rely on hard waste being stored within individual rooms or amenity areas between collections;
- (d) Scheduled collection of hard waste at the end of each semester.  
to the satisfaction of the Responsible Authority.

## Maintenance of waste storage area

- 30 All bins and receptacles used for the collection and storage of solid waste, recyclables and other wastes must be kept in a designated area, to the satisfaction of the Responsible Authority. This storage area must be:
- (a) Properly paved and drained to a legal point of discharge;
  - (b) Screened from view with a suitably designed enclosure;
  - (c) Supplied with adequate hot and cold water; and
  - (d) Maintained in a clean and tidy condition free from offensive odours to the satisfaction of the Responsible Authority.

## Hours for waste collection

- 31 Collection of waste must be conducted so as not to cause any unreasonable disturbance to nearby residential properties and may only take place during the following times:
- |                             |                       |
|-----------------------------|-----------------------|
| Monday to Friday:           | 7:00am to 6:00pm      |
| Saturday & Public Holidays: | 9:00am to 6:00pm      |
| Sunday:                     | No collection allowed |
- to the satisfaction of the Responsible Authority.

## Regular waste removal

- 32 All waste material not required for further on-site processing must be regularly removed from the site. All vehicles removing waste must have fully secured and contained loads so that no wastes are spilled or dust or odour is created, to the satisfaction of the Responsible Authority.

## Land Suitable for a Sensitive Use

- 33 Prior to the commencement of construction of the building hereby approved:
- (a) A preliminary risk screen assessment statement in accordance with the *Environment Protection Act 2017* must be issued stating that an environmental audit is not required for the use or the proposed use; or
  - (b) An environmental audit statement under Part 8.3 of the *Environment Protection Act 2017* must be issued stating that the land is suitable for the use or proposed use.
- 34 Notwithstanding the provisions of Condition 33, the following works can be carried out before any necessary environmental audit statement or a is provided to the Responsible Authority:
- (a) Buildings and works that necessarily form part of the Environmental Audit process; and
  - (b) Buildings and works that the Environmental Auditor engaged by the owners advises must be carried out before an environmental audit statement can be issued.
- 35 Buildings and works under Condition 34 carried out before any necessary environmental audit statement is provided to the Responsible Authority must be carried out in accordance with the

**Date Issued: 25 July 2022**

**Signature for the Responsible Authority:**



Daniel Murphy

**PLANNING APPEALS COORDINATOR**

Works Plan approved by the Environmental Auditor engaged by the owner. A copy of the Works Plan must be provided to the Responsible Authority before the commencement of the buildings and works for the purposes of this condition.

- 36 Before the construction of the building hereby approved commences (excluding buildings and works carried out in accordance with a Works Plan approved by the Environmental Auditor engaged by the owner), a copy of any necessary environmental audit statement, and the complete audit report and audit area plan must be submitted to the Responsible Authority.
- 37 The development and use allowed by this permit must comply with the directions and conditions of any environmental audit statement issued for the land.
- 38 Prior to the occupation of the residential building (student accommodation), a letter must be submitted to the Responsible Authority by an Environmental Auditor accredited with the EPA, to advise that all construction and remediation works necessary and required by an environmental audit statement have been carried out.
- 39 Any handling and disposal of contaminated site soil must be in accordance with the requirements of any environmental audit statement issued for the land, the requirements of the Environment Protection Authority and the *Environment Protection Act 2017*.

#### Underground infrastructure connections

- 40 Underground infrastructure connections, including electricity, must be available to each premises shown on the endorsed plans before any premises can be occupied, to the satisfaction of the Responsible Authority.

#### Use of car parking spaces and driveways

- 41 Car spaces, access lanes and driveways shown on the endorsed plan must not be used for any other purpose and may be used by occupants of or visitors to the site and the general public to the satisfaction of the Responsible Authority.
- 42 All vehicles entering and exiting the car park must do so in a forwards direction.

#### Car park control equipment

- 43 Before the use starts or any building is occupied, details of any car park control equipment (controlling access to and egress from the internal car parks) must be submitted to and approved in writing by the Responsible Authority. These details must include a car park control device which can be accessed by visitors to the development including clear instructions on how to operate any security system, to the satisfaction of the Responsible Authority.

#### Number and allocation of car parking spaces

- 44 A minimum of 12 car parking spaces associated with the student housing use must be provided on the land, unless varied with the written consent of the Responsible Authority.

#### Vehicle crossovers

- 45 Any new vehicle crossover or modification to an existing vehicle crossover must be constructed to the satisfaction of the Responsible Authority.

#### Removal of redundant vehicle crossovers

- 46 All disused or redundant vehicle crossovers must be removed and the area reinstated with footpath, kerb and channel to the satisfaction of the Responsible Authority.

Date Issued: 25 July 2022

Signature for the Responsible Authority: \_\_\_\_\_



Daniel Murphy

PLANNING APPEALS COORDINATOR

Planning Permit No.: PP21/0610

Address of the Land: 21-27 Queens Avenue, Hawthorn

# VCAT Directed Plans

These plans/documents are available for viewing in accordance with the direction of the Victorian Civil and Administrative Tribunal in the matter of VCAT:Ref.P830/2023."



## Concealment of Pipes

- 47 All pipes (except down-pipes), fixtures, fittings and vents servicing any building on the site must be concealed in service ducts or otherwise hidden from external view to the satisfaction of the Responsible Authority.

## Plant/equipment or features on roof

- 48 No plant, equipment, services or architectural features other than those shown on the endorsed plans are permitted above the roof level of the buildings without the prior written consent of the Responsible Authority.

## Boundary walls

- 49 The external faces of walls on or facing boundaries are to be cleaned and finished to the same standard as such walls within the development site to the satisfaction of the Responsible Authority.

## Environmentally Sustainable Design Report

- 50 Concurrent with the submission of amended plans required by Condition 1 of this Permit, an Environmentally Sustainable Design (ESD) Report that is to the satisfaction of the Responsible Authority must be prepared by a suitably qualified expert and submitted to the Responsible Authority for approval. The Report must address ESD principles proposed for the site, including, but not limited to:
- (a) Energy efficiency;
  - (b) The use of double glazing (or better) with commercial-grade seals for all exterior glazing;
  - (c) Stormwater collection (for re-use in landscape irrigation and toilet flushing, with mains back-up). The capacity of the tank and the catchment area must be sufficient to achieve a Melbourne Water STORM rating of not less than 100%;
  - (d) A maintenance regime for the infrastructure, plant and equipment associated with stormwater collection and re-use, including, but not limited to:
    - i Gutters inspection and clearing;
    - ii Roof (condition and clearance of debris);
    - iii Checks of tank inlets, insect-proofing, first flush diversion and filter clean/repair;
    - iv Tank and tank roof checks (structural integrity check, access cover check, hole repairs);
    - v Internal inspection (infestation by animals/insect larvae, algal growth);
    - vi Downpipes and rainwater reticulation integrity checks;
    - vii Pump checks (noise and proper and reliable operation);
    - viii Tank draining for internal inspection and checks for deterioration;
    - ix Sediment level check and removal;
    - x Pressure tests and rectification of deterioration;
    - xi Reviews of management procedures and implementation of preventative actions;
    - xii The frequency with which these checks are to take place;

Date Issued: 25 July 2022

Signature for the Responsible Authority: \_\_\_\_\_

Daniel Murphy

PLANNING APPEALS COORDINATOR

xiii Details of who is to be responsible for ensuring the WSUD system continues to operate in good order;

- (e) Communal charging facilities for electric scooters/motorcycles;
- (f) Waste disposal, including regular food and garden organics (FOGO) collection and building materials;

Any recommended changes to the building must be incorporated into the plans required by Condition 1. Once approved, such a plan must be implemented prior to the occupation of the dwellings to the satisfaction of the Responsible Authority.

### Construction Management Plan

51 Prior to the commencement of any site works, including demolition and excavation, a Construction Management Plan must be submitted to and endorsed by the Responsible Authority. No works are permitted to occur until the Plan has been endorsed by the Responsible Authority. Once endorsed, the construction management plan will form part of the permit and must be implemented to the satisfaction of the Responsible Authority. The plan must be prepared in accordance with Council's Construction Management Plan Template and provide details of the following:

- (a) Hours for construction activity in accordance with any other condition of this permit;
- (b) Measures to control noise, dust, water and sediment laden runoff;
- (c) Measures relating to removal of hazardous or dangerous material from the site, where applicable;
- (d) A plan showing the location of parking areas for construction and subcontractors' vehicles on and surrounding the site, to ensure that vehicles associated with construction activity cause minimum disruption to surrounding premises. Any basement car park on the land must be made available for use by sub-constructors/tradespersons upon completion of such areas, without delay;
- (e) A Traffic Management Plan showing truck routes to and from the site;
- (f) Swept path analysis demonstrating the ability for trucks to enter and exit the site in a safe manner for the largest anticipated truck associated with the construction;
- (g) A plan showing the location and design of a vehicle wash-down bay for construction vehicles on the site;
- (h) Measures to ensure that sub-contractors/tradespersons operating on the site are aware of the contents of the Construction Management Plan;
- (i) Contact details of key construction site staff;
- (j) A site plan showing the location of any site sheds, on-site amenities, building waste storage and the like, noting that Council does not support the siting of site sheds within Council road reserves; and
- (k) Any other relevant matters.

### Hours for Demolition and Construction Work

52 All works including earthworks, demolition and construction activity associated with the approved development must take place only during the following hours, except with the prior written consent of the Responsible Authority:

**Date Issued: 25 July 2022**

**Signature for the Responsible Authority:**



Daniel Murphy

**PLANNING APPEALS COORDINATOR**

Planning Permit No.: PP21/0610

Address of the Land: 21-27 Queens Avenue, Hawthorn

# VCAT Directed Plans

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Monday to Thursday: 7:00am to 6:00pm

Friday: 7:00am to 5:00pm

Saturday: 9:00am to 5:00pm

Sunday & Public Holidays: No construction

## Amenity of area

53 The amenity of the area must not be adversely affected by the use and development as a result of the:

- (a) Transport of materials, goods or commodities to or from the land; and/or
- (b) Appearance of any building, works, stored goods or materials; and/or
- (c) Emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, ash, dust, waste water, waste products, grit or oil; and/or
- (d) The presence of vermin.

## Permit to Expire

54 This Permit will expire if:

- (a) The development does not start within two (2) years of the issue date of this Permit;
- (b) The development is not completed within four (4) years of the issue date of this Permit.
- (c) The use of the land for student accommodations is not commenced within two (2) years of the completion of the development.

In accordance with Section 69 of the *Planning and Environment Act 1987*, a request may be submitted to the Responsible Authority within the prescribed timeframes for an extension of the periods referred to in this condition.

## Notes

- *Headings are for ease of reference only and do not affect the interpretation of permit conditions.*
- *This is not a Building Permit. A Building Permit may be required prior to the commencement of any works associated with the proposed development.*
- *Pursuant to Council's Residential Parking Permit Policy (2011), the owners and occupiers of dwellings approved in this development will not be eligible to obtain resident or visitor parking permits. The Residential Parking Permit Policy is available to download at [http://www.boroondara.vic.gov.au/your\\_council/local-laws-policies/traffic](http://www.boroondara.vic.gov.au/your_council/local-laws-policies/traffic) . Alternatively please contact Council on 9278 4444.*
- *Prior to the commencement of any works on the site, the owner/developer must submit drainage plans for assessment and approval by the Responsible Authority (Asset Management).*
- *Stormwater drains are to be connected to a legal point of discharge approved by Council. Drainage Connections within a road reserve, right-of-way, parkland, within an easement or to a*

Date Issued: 25 July 2022

Signature for the Responsible Authority: \_\_\_\_\_

Daniel Murphy

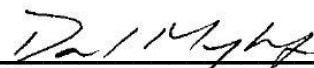
PLANNING APPEALS COORDINATOR

Health Act drain must be to Council's standards. A Council Supervision Permit is required for this work. All fees and charges associated with the connection are to be borne by the applicant.

- Prior to the commencement of any works on the site, the owner / developer must submit any new vehicular crossover or modification or alteration to an existing crossover proposal for assessment and approval by the Responsible Authority (Asset Management).
- The Tree Protection Local Law requires that a Local Law Tree Permit be sought from Council for the removal and/or lopping of a 'Significant Tree' and/or excavation within the critical root zone of a Significant Tree. A list of Significant Trees is available at <http://www.boroondara.vic.gov.au/our-city/trees/significant-trees>. A Local Law Tree Permit is also required to remove, damage kill or destroy any identified 'Canopy Tree' which may include any excavation within the tree protection zone of a 'canopy tree'. The Tree Protection Local Law identifies a 'Canopy tree' as any tree with a single trunk circumference of 110cm or a combined circumference of a multi stemmed tree of 110cm or greater measured at 1.5m above ground level. A Planning Permit does not constitute a Local Law Tree Permit or permission to remove, damage kill or destroy a significant or canopy tree. The Tree Protection Local Law is available to download at <http://www.boroondara.vic.gov.au/our-city/trees/tree-works-permits> alternatively please contact Council's Arborist – Statutory Planning (telephone 9278 4888) should a Local Law Tree Permit be required.
- An Asset Protection Permit is required prior to the commencement of site works in accordance with Council's Protection of Council Assets and Control of Building Sites Local Law 2011.
- Prior consent from Council and any and all public authorities is required to be obtained for alteration or reinstatement of assets or services affected as a result of the development.
- The full cost of reinstatement of any Council assets damaged as a result of demolition, building or construction works, must be met by the permit applicant or any other person responsible for such damage, to the satisfaction of the Responsible Authority.
- Discharge to the legal point of discharge will be allowed subject to the flow being limited to a rate equivalent to pre-development levels or less. Any additional discharge and / or runoff above the pre-development level is to be detained on site, via an approved storm water detention system. This matter should be discussed with Council's Asset Management Department.
- Bunting, streamers, flags, wind-vanes or festooning must not be displayed without the written consent of the Responsible Authority.
- Residents of the development approved by this permit will not be issued resident parking permits (including visitor parking permits).
- Should the land cease to be used for student accommodation a new planning permit may be required for an alternative use. It should be noted that any dispensation for on-site car parking given to the student accommodation development may not be transferable to any proposed alternative use of the land. Any subsequent use will be assessed in accordance with the car parking provisions of the Boroondara Planning Scheme.
- Prior to the issue of a building permit, the owner must obtain the consents of all relevant authorities for any buildings or works, including any paving, fences and landscaping, over any

Date Issued: 25 July 2022

Signature for the Responsible Authority: \_\_\_\_\_



Daniel Murphy

**PLANNING APPEALS COORDINATOR**

Planning Permit No.: PP21/0610

Address of the Land: 21-27 Queens Avenue, Hawthorn

# VCAT Directed Plans

These plans/documents are available for viewing in accordance with the direction of the Victorian Civil and Administrative Tribunal in the matter of VCAT Ref P830/2023."



easement or underground services under the control of a public authority including sewers, drains, pipes, wires or cables.

- The owner must accept all reinstatement costs in carrying out repairs to any buildings, works or landscaping over the easements should such buildings, works or landscaping be disturbed by any works undertaken by Council in the future.
- Pursuant to Sections 24 of the Aboriginal Heritage Act 2006 if an unregistered Aboriginal place or object is discovered in the course of works being carried out the person in charge of the works is required to report the discovery to the Secretary of the Office of Aboriginal Affairs Victoria (OAAV) as soon as practicable.
- It is an offence to knowingly harm Aboriginal cultural heritage unless permitted by Section 29 of the Aboriginal Heritage Act 2006 and penalties apply.

Date Issued: 25 July 2022

Signature for the Responsible Authority:

A handwritten signature in black ink, appearing to read "Daniel Murphy".

Daniel Murphy

PLANNING APPEALS COORDINATOR

## VCAT ISSUED PERMIT

### IMPORTANT INFORMATION ABOUT THIS PERMIT (see over)

#### WHAT HAS BEEN DECIDED?

The responsible authority has issued a permit at the direction of the Victorian Civil and Administrative Tribunal.  
(Note: This is not a permit granted under Division 5 or 6 of Part 4 of the **Planning and Environment Act 1987**.)

#### CAN THE RESPONSIBLE AUTHORITY AMEND THIS PERMIT?

The responsible authority may amend this permit under Division 1A of Part 4 of the **Planning and Environment Act 1987**.

#### WHEN DOES A PERMIT BEGIN?

A permit operates:

- from the date specified in the permit; or
- if no date is specified, from—
  - (i) the date of the decision of the Victorian Civil and Administrative Tribunal, if the permit was issued at the direction of the Tribunal; or
  - (ii) the date on which it was issued, in any other case.

#### WHEN DOES A PERMIT EXPIRE?

1. A permit for the development of land expires if—
  - the development or any stage of it does not start within the time specified in the permit; or
  - the development requires the certification of a plan of subdivision or consolidation under the Subdivision Act 1988 and the plan is not certified within two years of the issue of the permit, unless the permit contains a different provision; or
  - the development or any stage is not completed within the time specified in the permit, or, if no time is specified, within two years after the issue of the permit or in the case of a subdivision or consolidation within 5 years of the certification of the plan of subdivision or consolidation under the **Subdivision Act 1988**.
2. A permit for the use of land expires if—
  - the use does not start within the time specified in the permit, or if no time is specified, within two years after the issue of the permit; or
  - the use is discontinued for a period of two years.
3. A permit for the development and use of land expires if—
  - the development or any stage of it does not start within the time specified in the permit; or
  - the development or any stage of it is not completed within the time specified in the permit, or, if no time is specified, within two years after the issue of the permit; or
  - the use does not start within the time specified in the permit, or, if no time is specified, within two years after the completion of the development; or
  - the use is discontinued for a period of two years.
4. If a permit for the use of land or the development and use of land or relating to any of the circumstances mentioned in section 6A(2) of the **Planning and Environment Act 1987**, or to any combination of use, development or any of those circumstances requires the certification of a plan under the **Subdivision Act 1988**, unless the permit contains a different provision—
  - the use or development of any stage is to be taken to have started when the plan is certified; and
  - the permit expires if the plan is not certified within two years of the issue of the permit.
5. The expiry of a permit does not affect the validity of anything done under that permit before the expiry.

#### WHAT ABOUT REVIEWS?

- The person who applied for the permit may apply for a review of any condition in the permit unless it was granted at the direction of the Victorian Civil and Administrative Tribunal, in which case no right of review exists.
- An application for review must be lodged within 60 days after the permit was issued, unless a notice of decision to grant a permit has been issued previously, in which case the application for review must be lodged within 60 days after the giving of that notice.
- An application for review is lodged with the Victorian Civil and Administrative Tribunal.
- An application for review must be made on the relevant form which can be obtained from the Victorian Civil and Administrative Tribunal, and be accompanied by the applicable fee.
- An application for review must state the grounds upon which it is based.
- A copy of an application for review must also be served on the responsible authority.
- Details about applications for review and the fees payable can be obtained from the Victorian Civil and Administrative Tribunal.

The contact details of the Victorian Civil and Administrative Tribunal are:

55 King Street, MELBOURNE VIC 3000. Telephone: (03) 9628 9777, Fax: (03) 9628 9789.

<http://www.vcat.vic.gov.au/>

## PLANNING PERMIT

# VCAT Directed Plans

These plans/documents are available for viewing in accordance with the direction of the Victorian Civil and Administrative Tribunal in the matter of **BOROONDARA** City of Harmony  
VCAT:Ref.P830/2023."

**Permit Number:** PP21/0610  
**Planning Scheme:** Boroondara Planning Scheme  
**Responsible Authority:** City of Boroondara

**ADDRESS OF THE LAND:** 21-27 Queens Avenue, Hawthorn

### THE PERMIT ALLOWS:

Construction of a 10-storey building for the use of student accommodation, ground floor retail premises and a reduction in the standard car parking requirements for the retail premises in accordance with the endorsed plans.

***This permit was issued by Order of the Victorian Civil and Administrative Tribunal dated 7<sup>th</sup> July 2022 – Application For Review No. P11937/2021.***

### THE FOLLOWING CONDITIONS APPLY TO THIS PERMIT:

#### CONDITIONS

##### Amended plans required

- 1 Before the development starts, amended plans must be submitted to the satisfaction of the Responsible Authority. When the plans are to the satisfaction of the Responsible Authority they will be endorsed and will then form part of the Permit. The plans must be drawn to scale with dimensions in an unlocked PDF, substantially in accordance with the advertised plans (VCAT Amended Plans, plot date 24/4/2022, Rev 2) prepared by Plus Architecture, but modified to show:  
*General:*
  - (a) Changes to the western edge of the terraces along the walkway in accordance with the plan prepared by Plus Architecture TP100 Revision 3 dated 20 May 2022.
  - (b) Correct the North Elevation generally in accordance with the plan prepared by Plus Architecture TP200 Revision 3 dated 20 May 2022 including a pattern to the concrete wall at ground level.
  - (c) Provision of additional communal study spaces at levels 3-6.*Materials and Finishes:*
  - (d) The Queens Avenue footpath, adjacent to the subject site, to be resurfaced with asphalt and bluestone banding with finished surface levels that generally match the existing conditions;
  - (e) The finished surface material for the ground floor front setback to consist of asphalt and bluestone bands with finished floor levels that match the resurfaced adjacent footpath;
  - (f) The application of a graffiti-resistant coating to all brick and concrete finishes on the at-grade floors facing Queens Avenue and the VicTrack land;
  - (g) Modifications to the schedule of materials and finishes to detail the proposed ground surface materials and levels for the front setback;

**Date Issued: 25 July 2022**

**Signature for the Responsible Authority:** \_\_\_\_\_

  
Daniel Murphy

**PLANNING APPEALS COORDINATOR**

- (h) A schedule of materials and finishes, including physical samples of all stone, timber finishes, concretes, brick and metal finishes. The schedule must include details of the size format that the various materials are to be applied and provide further details of the finishes; *Sustainability:*

- (i) Any modifications to the development necessary as a result of recommendations made in the ESD report required by this permit;

*Parking and accessways:*

- (j) A notation bicycle signage is to be installed and displayed in accordance with Clause 52.34-5 of the Boroondara Planning Scheme;
- (k) A Bicycle and Car Parking Management Plan in accordance with this permit;
- (l) The redundant vehicle crossover removed and the area reinstated with footpath, kerb and channel;

*Acoustic Report*

- (m) Any modifications to the proposed development that are identified in the Acoustic report required by this permit;

### Layout and uses not to be altered

- 2 The layout of the site and the size, levels, design and location of buildings and works and the description of the uses shown on the endorsed plans must not be modified for any reason (unless the Boroondara Planning Scheme specifies that a permit is not required) without the prior written consent of the Responsible Authority.

### Student Management Plan

- 3 Before the occupation of the building, a Student Management Plan for the site must be submitted to and approved by the Responsible Authority. The plan must not be modified without the written consent of the Responsible Authority. The Plan must cover the following points but may include other points:
- (a) A standard lease for the student lodging rooms;
- (b) The nature of the management of the complex and contact details of the site manager/management company;
- (c) The means by which bicycle parking will be allocated and a register that documents allocation of these spaces;
- (d) Rules regarding occupancy and behaviour of residents and visitors and grievance procedures;
- (e) Emergency and evacuation procedures;
- (f) Maintenance and cleaning schedules;
- (g) Details of management procedures over holiday periods;
- (h) Details of rubbish bin storage and collection;
- (i) Any provision for short stays by parents or visitors, subject to the availability of beds.
- (j) Details of supervision and/or security of the site.

Date Issued: 25 July 2022

Signature for the Responsible Authority: \_\_\_\_\_



Daniel Murphy

PLANNING APPEALS COORDINATOR

When approved, the Plan will be endorsed and will then form part of the permit. The use must be in accordance with the approved Student Management Plan, to the satisfaction of the Responsible Authority.

### Bicycle and Car Parking Management Plan

- 4 Concurrent with the submission of amended plans required by Condition 1 of this Permit, a Bicycle and Car Parking Management Plan must be submitted to and approved by the Responsible Authority.

The Plan must detail how the on-site bicycle and car parking spaces approved under this permit will be allocated and managed, and outline fees or charges associated with the use of the bicycle and car parking spaces and electric charging facilities which must not deter usage of the designated spaces by residents of the accommodation.

When approved, the Plan will be endorsed and will then form part of the permit. Management of the parking provided in association with the use must be in accordance with the approved Plan, to the satisfaction of the Responsible Authority.

### Subdivision of student accommodation

- 5 Any future subdivision of the student accommodation facility must show all communal facilities, including bicycle parking, student lounges, ground floor entry, study areas and laundry, as common property to be managed for the benefit of the student residents.

### Facilities for residents only

- 6 Any recreational facilities on the premises must only be accessible to persons who are residents or guests of the residents. It is the responsibility of the management to ensure access is restricted to persons registered to stay on the premises who hold a security pass or key to a room on the relevant date and their guests to the satisfaction of the responsible authority.

### Acoustic report

- 7 Prior to the endorsement of plans pursuant to condition 1 of this permit, an acoustic report prepared by a suitably qualified person must be prepared to the satisfaction of, and submitted to, the responsible authority for approval.

Once approved, the acoustic report will be endorsed and will then form part of the permit. The acoustic report must include recommendations as to how the dwellings in the development will achieve compliance with the internal noise levels contained in Standard D16 of Clause 58. Any modifications to the proposed development that are identified in that report as being necessary to achieve compliance with D16 must be shown in the plans required by condition 1 of this permit.

### Landscape Plan

- 8 Concurrent with the endorsement of the plans referred to in Condition 1 of this permit, a Landscape Plan to the satisfaction of the responsible authority must be submitted to and approved by the Responsible Authority. The plan must be drawn to scale with dimensions and three (3) copies provided. When endorsed, the plan will form part of the permit. The plan must be generally in accordance with the Landscape concept plan prepared by John Patrick Landscape Architects, revision A for VCAT circulated on 26 April 2022, but modified to show:
- (a) Changes in accordance with the development plans.
  - (b) Provision of hanging plants at ground level within the planters along the northern elevation that will hang down over the wall.

Date Issued: 25 July 2022

Signature for the Responsible Authority: \_\_\_\_\_



Daniel Murphy

PLANNING APPEALS COORDINATOR

Planning Permit No.: PP21/0610

Address of the Land: 21-27 Queens Avenue, Hawthorn

# VCAT Directed Plans

These plans/documents are available for viewing in accordance with the direction of the Victorian Civil and Administrative Tribunal in the matter of VCAT:Ref.P830/2023."



## Completion of landscaping works

- 9 Landscaping as shown on the endorsed landscape plans must be carried out and completed to the satisfaction of the Responsible Authority prior to the occupation of the development.

## Landscaping maintenance

- 10 All landscaping works shown on the endorsed landscape plan/s must be maintained and any dead, diseased or damaged plants replaced, all to the satisfaction of the Responsible Authority.

## Maintenance of Buildings and Works

- 11 All buildings and works must be maintained in good order and appearance to the satisfaction of the Responsible Authority.

## Drainage

- 12 The land must be drained to the satisfaction of the Responsible Authority.

## Confirmation of architect team

- 13 Before the development starts, the Responsible Authority must be provided with evidence to its satisfaction that Plus Architecture, or an alternative architectural firm to the satisfaction of the Responsible Authority, has been engaged as part of the ongoing consultant team to oversee the design and construction to ensure that the design quality and appearance of the approved development is realised.

## Management Plan

- 14 Prior to the occupation of the development, a management plan for the public pedestrian link must be prepared to the satisfaction of, and submitted to, the Responsible Authority for approval. Once approved, the management plan will be endorsed and will then form part of the permit. The management plan must include details of the times during which the link will be open to the public, and any other conditions with respect to its use. The management plan must be complied with at all times unless with the written consent of the responsible authority

## Conditions relating to railway land

- 15 Unless otherwise agreed in writing with Public Transport Victoria and VicTrack, windows and doors must not be placed on the title boundary with the Railway Land and no windows or doors are permitted to open beyond the Railway Land title boundary to the satisfaction of Public Transport Victoria and VicTrack.
- ~~16 Prior to the commencement of works, detailed construction/ engineering plans and computations for any construction or works likely to have an impact on railway operations or railway infrastructure assets are to be submitted to and approved by VicTrack and the Rail Operator. The plans must detail all excavation of the site adjacent to the railway corridor, having any impact on the rail reserve, and ensure compliance regarding building clearances to aerial power lines as per the applicable Victorian Electrical Safety Regulations.~~
- 17 Unless otherwise agreed in writing with VicTrack permanent or temporary soil anchors must not be installed on railway land.
- ~~18 Prior to commencement of works, the Rail Operator must be contacted through the email address [metrositeaccess@metrotrains.com.au](mailto:metrositeaccess@metrotrains.com.au) to obtain the Rail Operator's conditions and safety requirements for works on, over or adjacent to railway land.~~

Date Issued: 25 July 2022

Signature for the Responsible Authority: \_\_\_\_\_

Daniel Murphy

PLANNING APPEALS COORDINATOR

- 19 Any damage to the Rail Operator's infrastructure as a consequence of the construction works must be rectified to the satisfaction of the Rail Operator at full cost of the Permit holder.
- 20 The Planning Permit holder must take all reasonable steps to ensure that disruptions to train operation within the railway corridor are kept to a minimum during the construction of the development and are in compliance with the Rail Operators Safety and Environmental requirements within the Rail Operators construction control and indemnity agreement.
- 21 Building materials (including glass/window/ balcony treatments) likely to have an effect on train driver operations along the rail corridor must be nonreflective and avoid using red or green colour schemes.
- 22 No lighting is to be erected that throws light onto the railway tracks or which interferes with the visibility of signals and the rail lines by train drivers.
- 23 No drainage, effluent, waste, soil or other materials must enter or be directed to railway land or stored or deposited on railway land.
- 24 Entry onto railway land is at the discretion of the Rail Operator and is subject to the Rail Operator's Site Access Procedures and conditions.
- ~~25 The developer shall pay any Rail Operator costs required for the development documentation review or construction works due to the Permit as required by the Rail Operator.~~
- 26 Access to VicTrack land during construction and for maintenance purposes after completion will require permission from Metro Trains Melbourne and will be subject to both organisation's site access procedures and conditions.

## External lighting (outdoor communal and publicly accessible areas)

- 27 Concurrent with the endorsement of the plans referred to in Condition 1 of this permit, a detailed External Lighting Plan must be prepared to the satisfaction of the Responsible Authority. Once satisfactory, such plan will be endorsed and must be implemented to the satisfaction of the Responsible Authority. The plan must provide the following details to the satisfaction of the Responsible Authority:
  - (a) Lighting within the outdoor publicly accessible areas of the site; (b) Lighting within the outdoor communal areas.When endorsed, the plan will form part of the permit.
- 28 All outdoor lighting of publicly accessible areas must be designed, baffled and located to prevent light from the site causing any detriment to the locality, to the satisfaction of the Responsible Authority.

## Waste Management Plan

- 29 Concurrent with the submission of amended plans required by Condition 1 of this Permit, a Waste Management Plan must be prepared to the satisfaction of the Responsible Authority. Once satisfactory, such plan will be endorsed and must be implemented to the satisfaction of the Responsible Authority. The plan must be generally in accordance with the Waste Management Plan to include:
  - (a) Regular private food and garden organics (FOGO) collection; and
  - (b) Waste collection to occur outside AM and PM commuter peak times and in accordance with any other condition in this permit

Date Issued: 25 July 2022

Signature for the Responsible Authority: \_\_\_\_\_



Daniel Murphy

PLANNING APPEALS COORDINATOR

- (c) Sufficient space for communal hard waste storage so as to not have to rely on hard waste being stored within individual rooms or amenity areas between collections;
- (d) Scheduled collection of hard waste at the end of each semester.  
to the satisfaction of the Responsible Authority.

## Maintenance of waste storage area

- 30 All bins and receptacles used for the collection and storage of solid waste, recyclables and other wastes must be kept in a designated area, to the satisfaction of the Responsible Authority. This storage area must be:
- (a) Properly paved and drained to a legal point of discharge;
  - (b) Screened from view with a suitably designed enclosure;
  - (c) Supplied with adequate hot and cold water; and
  - (d) Maintained in a clean and tidy condition free from offensive odours to the satisfaction of the Responsible Authority.

## Hours for waste collection

- 31 Collection of waste must be conducted so as not to cause any unreasonable disturbance to nearby residential properties and may only take place during the following times:
- |                             |                       |
|-----------------------------|-----------------------|
| Monday to Friday:           | 7:00am to 6:00pm      |
| Saturday & Public Holidays: | 9:00am to 6:00pm      |
| Sunday:                     | No collection allowed |
- to the satisfaction of the Responsible Authority.

## Regular waste removal

- 32 All waste material not required for further on-site processing must be regularly removed from the site. All vehicles removing waste must have fully secured and contained loads so that no wastes are spilled or dust or odour is created, to the satisfaction of the Responsible Authority.

## Land Suitable for a Sensitive Use

- 33 Prior to the commencement of construction of the building hereby approved:
- (a) A preliminary risk screen assessment statement in accordance with the *Environment Protection Act 2017* must be issued stating that an environmental audit is not required for the use or the proposed use; or
  - (b) An environmental audit statement under Part 8.3 of the *Environment Protection Act 2017* must be issued stating that the land is suitable for the use or proposed use.
- 34 Notwithstanding the provisions of Condition 33, the following works can be carried out before any necessary environmental audit statement or a is provided to the Responsible Authority:
- (a) Buildings and works that necessarily form part of the Environmental Audit process; and
  - (b) Buildings and works that the Environmental Auditor engaged by the owners advises must be carried out before an environmental audit statement can be issued.
- 35 Buildings and works under Condition 34 carried out before any necessary environmental audit statement is provided to the Responsible Authority must be carried out in accordance with the

**Date Issued: 25 July 2022**

**Signature for the Responsible Authority:**



Daniel Murphy

**PLANNING APPEALS COORDINATOR**

Works Plan approved by the Environmental Auditor engaged by the owner. A copy of the Works Plan must be provided to the Responsible Authority before the commencement of the buildings and works for the purposes of this condition.

- 36 Before the construction of the building hereby approved commences (excluding buildings and works carried out in accordance with a Works Plan approved by the Environmental Auditor engaged by the owner), a copy of any necessary environmental audit statement, and the complete audit report and audit area plan must be submitted to the Responsible Authority.
- 37 The development and use allowed by this permit must comply with the directions and conditions of any environmental audit statement issued for the land.
- 38 Prior to the occupation of the residential building (student accommodation), a letter must be submitted to the Responsible Authority by an Environmental Auditor accredited with the EPA, to advise that all construction and remediation works necessary and required by an environmental audit statement have been carried out.
- 39 Any handling and disposal of contaminated site soil must be in accordance with the requirements of any environmental audit statement issued for the land, the requirements of the Environment Protection Authority and the *Environment Protection Act 2017*.

#### Underground infrastructure connections

- 40 Underground infrastructure connections, including electricity, must be available to each premises shown on the endorsed plans before any premises can be occupied, to the satisfaction of the Responsible Authority.

#### Use of car parking spaces and driveways

- 41 Car spaces, access lanes and driveways shown on the endorsed plan must not be used for any other purpose and may be used by occupants of or visitors to the site and the general public to the satisfaction of the Responsible Authority.
- 42 All vehicles entering and exiting the car park must do so in a forwards direction.

#### Car park control equipment

- 43 Before the use starts or any building is occupied, details of any car park control equipment (controlling access to and egress from the internal car parks) must be submitted to and approved in writing by the Responsible Authority. These details must include a car park control device which can be accessed by visitors to the development including clear instructions on how to operate any security system, to the satisfaction of the Responsible Authority.

#### Number and allocation of car parking spaces

- 44 A minimum of 12 car parking spaces associated with the student housing use must be provided on the land, unless varied with the written consent of the Responsible Authority.

#### Vehicle crossovers

- 45 Any new vehicle crossover or modification to an existing vehicle crossover must be constructed to the satisfaction of the Responsible Authority.

#### Removal of redundant vehicle crossovers

- 46 All disused or redundant vehicle crossovers must be removed and the area reinstated with footpath, kerb and channel to the satisfaction of the Responsible Authority.

Date Issued: 25 July 2022

Signature for the Responsible Authority: \_\_\_\_\_



Daniel Murphy

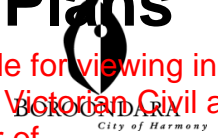
PLANNING APPEALS COORDINATOR

**Planning Permit No.: PP21/0610**

**Address of the Land: 21-27 Queens Avenue, Hawthorn**

# VCAT Directed Plans

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## Concealment of Pipes

- 47 All pipes (except down-pipes), fixtures, fittings and vents servicing any building on the site must be concealed in service ducts or otherwise hidden from external view to the satisfaction of the Responsible Authority.

## Plant/equipment or features on roof

- 48 No plant, equipment, services or architectural features other than those shown on the endorsed plans are permitted above the roof level of the buildings without the prior written consent of the Responsible Authority.

## Boundary walls

- 49 The external faces of walls on or facing boundaries are to be cleaned and finished to the same standard as such walls within the development site to the satisfaction of the Responsible Authority.

## Environmentally Sustainable Design Report

- 50 Concurrent with the submission of amended plans required by Condition 1 of this Permit, an Environmentally Sustainable Design (ESD) Report that is to the satisfaction of the Responsible Authority must be prepared by a suitably qualified expert and submitted to the Responsible Authority for approval. The Report must address ESD principles proposed for the site, including, but not limited to:
- (a) Energy efficiency;
  - (b) The use of double glazing (or better) with commercial-grade seals for all exterior glazing;
  - (c) Stormwater collection (for re-use in landscape irrigation and toilet flushing, with mains back-up). The capacity of the tank and the catchment area must be sufficient to achieve a Melbourne Water STORM rating of not less than 100%;
  - (d) A maintenance regime for the infrastructure, plant and equipment associated with stormwater collection and re-use, including, but not limited to:
    - i Gutters inspection and clearing;
    - ii Roof (condition and clearance of debris);
    - iii Checks of tank inlets, insect-proofing, first flush diversion and filter clean/repair;
    - iv Tank and tank roof checks (structural integrity check, access cover check, hole repairs);
    - v Internal inspection (infestation by animals/insect larvae, algal growth);
    - vi Downpipes and rainwater reticulation integrity checks;
    - vii Pump checks (noise and proper and reliable operation);
    - viii Tank draining for internal inspection and checks for deterioration;
    - ix Sediment level check and removal;
    - x Pressure tests and rectification of deterioration;
    - xi Reviews of management procedures and implementation of preventative actions;
    - xii The frequency with which these checks are to take place;

**Date Issued: 25 July 2022**

**Signature for the Responsible Authority:**

Daniel Murphy

**PLANNING APPEALS COORDINATOR**

xiii Details of who is to be responsible for ensuring the WSUD system continues to operate in good order;

- (e) Communal charging facilities for electric scooters/motorcycles;
- (f) Waste disposal, including regular food and garden organics (FOGO) collection and building materials;

Any recommended changes to the building must be incorporated into the plans required by Condition 1. Once approved, such a plan must be implemented prior to the occupation of the dwellings to the satisfaction of the Responsible Authority.

## Construction Management Plan

- 51 Prior to the commencement of any site works, including demolition and excavation, a Construction Management Plan must be submitted to and endorsed by the Responsible Authority. No works are permitted to occur until the Plan has been endorsed by the Responsible Authority. Once endorsed, the construction management plan will form part of the permit and must be implemented to the satisfaction of the Responsible Authority. The plan must be prepared in accordance with Council's Construction Management Plan Template and provide details of the following:
- (a) Hours for construction activity in accordance with any other condition of this permit;
  - (b) Measures to control noise, dust, water and sediment laden runoff;
  - (c) Measures relating to removal of hazardous or dangerous material from the site, where applicable;
  - (d) A plan showing the location of parking areas for construction and subcontractors' vehicles on and surrounding the site, to ensure that vehicles associated with construction activity cause minimum disruption to surrounding premises. Any basement car park on the land must be made available for use by sub-constructors/tradespersons upon completion of such areas, without delay;
  - (e) A Traffic Management Plan showing truck routes to and from the site;
  - (f) Swept path analysis demonstrating the ability for trucks to enter and exit the site in a safe manner for the largest anticipated truck associated with the construction;
  - (g) A plan showing the location and design of a vehicle wash-down bay for construction vehicles on the site;
  - (h) Measures to ensure that sub-contractors/tradespersons operating on the site are aware of the contents of the Construction Management Plan;
  - (i) Contact details of key construction site staff;
  - (j) A site plan showing the location of any site sheds, on-site amenities, building waste storage and the like, noting that Council does not support the siting of site sheds within Council road reserves; and
  - (k) Any other relevant matters.

## Hours for Demolition and Construction Work

- 52 All works including earthworks, demolition and construction activity associated with the approved development must take place only during the following hours, except with the prior written consent of the Responsible Authority:

**Date Issued: 25 July 2022**

**Signature for the Responsible Authority:**



Daniel Murphy

**PLANNING APPEALS COORDINATOR**

Planning Permit No.: PP21/0610

Address of the Land: 21-27 Queens Avenue, Hawthorn

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Monday to Thursday: 7:00am to 6:00pm

Friday: 7:00am to 5:00pm

Saturday: 9:00am to 5:00pm

Sunday & Public Holidays: No construction

## Amenity of area

53 The amenity of the area must not be adversely affected by the use and development as a result of the:

- (a) Transport of materials, goods or commodities to or from the land; and/or
- (b) Appearance of any building, works, stored goods or materials; and/or
- (c) Emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, ash, dust, waste water, waste products, grit or oil; and/or
- (d) The presence of vermin.

## Permit to Expire

54 This Permit will expire if:

- (a) The development does not start within two (2) years of the issue date of this Permit;
- (b) The development is not completed within four (4) years of the issue date of this Permit.
- (c) The use of the land for student accommodations is not commenced within two (2) years of the completion of the development.

In accordance with Section 69 of the *Planning and Environment Act 1987*, a request may be submitted to the Responsible Authority within the prescribed timeframes for an extension of the periods referred to in this condition.

## Notes

- *Headings are for ease of reference only and do not affect the interpretation of permit conditions.*
- *This is not a Building Permit. A Building Permit may be required prior to the commencement of any works associated with the proposed development.*
- *Pursuant to Council's Residential Parking Permit Policy (2011), the owners and occupiers of dwellings approved in this development will not be eligible to obtain resident or visitor parking permits. The Residential Parking Permit Policy is available to download at [http://www.boroondara.vic.gov.au/your\\_council/local-laws-policies/traffic](http://www.boroondara.vic.gov.au/your_council/local-laws-policies/traffic) . Alternatively please contact Council on 9278 4444.*
- *Prior to the commencement of any works on the site, the owner/developer must submit drainage plans for assessment and approval by the Responsible Authority (Asset Management).*
- *Stormwater drains are to be connected to a legal point of discharge approved by Council. Drainage Connections within a road reserve, right-of-way, parkland, within an easement or to a*

Date Issued: 25 July 2022

Signature for the Responsible Authority: \_\_\_\_\_

Daniel Murphy

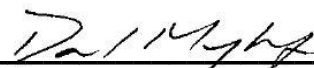
PLANNING APPEALS COORDINATOR

Health Act drain must be to Council's standards. A Council Supervision Permit is required for this work. All fees and charges associated with the connection are to be borne by the applicant.

- Prior to the commencement of any works on the site, the owner / developer must submit any new vehicular crossover or modification or alteration to an existing crossover proposal for assessment and approval by the Responsible Authority (Asset Management).
- The Tree Protection Local Law requires that a Local Law Tree Permit be sought from Council for the removal and/or lopping of a 'Significant Tree' and/or excavation within the critical root zone of a Significant Tree. A list of Significant Trees is available at <http://www.boroondara.vic.gov.au/our-city/trees/significant-trees>. A Local Law Tree Permit is also required to remove, damage kill or destroy any identified 'Canopy Tree' which may include any excavation within the tree protection zone of a 'canopy tree'. The Tree Protection Local Law identifies a 'Canopy tree' as any tree with a single trunk circumference of 110cm or a combined circumference of a multi stemmed tree of 110cm or greater measured at 1.5m above ground level. A Planning Permit does not constitute a Local Law Tree Permit or permission to remove, damage kill or destroy a significant or canopy tree. The Tree Protection Local Law is available to download at <http://www.boroondara.vic.gov.au/our-city/trees/tree-works-permits> alternatively please contact Council's Arborist – Statutory Planning (telephone 9278 4888) should a Local Law Tree Permit be required.
- An Asset Protection Permit is required prior to the commencement of site works in accordance with Council's Protection of Council Assets and Control of Building Sites Local Law 2011.
- Prior consent from Council and any and all public authorities is required to be obtained for alteration or reinstatement of assets or services affected as a result of the development.
- The full cost of reinstatement of any Council assets damaged as a result of demolition, building or construction works, must be met by the permit applicant or any other person responsible for such damage, to the satisfaction of the Responsible Authority.
- Discharge to the legal point of discharge will be allowed subject to the flow being limited to a rate equivalent to pre-development levels or less. Any additional discharge and / or runoff above the pre-development level is to be detained on site, via an approved storm water detention system. This matter should be discussed with Council's Asset Management Department.
- Bunting, streamers, flags, wind-vanes or festooning must not be displayed without the written consent of the Responsible Authority.
- Residents of the development approved by this permit will not be issued resident parking permits (including visitor parking permits).
- Should the land cease to be used for student accommodation a new planning permit may be required for an alternative use. It should be noted that any dispensation for on-site car parking given to the student accommodation development may not be transferable to any proposed alternative use of the land. Any subsequent use will be assessed in accordance with the car parking provisions of the Boroondara Planning Scheme.
- Prior to the issue of a building permit, the owner must obtain the consents of all relevant authorities for any buildings or works, including any paving, fences and landscaping, over any

Date Issued: 25 July 2022

Signature for the Responsible Authority: \_\_\_\_\_



Daniel Murphy

**PLANNING APPEALS COORDINATOR**

Planning Permit No.: PP21/0610

Address of the Land: 21-27 Queens Avenue, Hawthorn

# VCAT Directed Plans

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easement or underground services under the control of a public authority including sewers, drains, pipes, wires or cables.

- The owner must accept all reinstatement costs in carrying out repairs to any buildings, works or landscaping over the easements should such buildings, works or landscaping be disturbed by any works undertaken by Council in the future.
- Pursuant to Sections 24 of the Aboriginal Heritage Act 2006 if an unregistered Aboriginal place or object is discovered in the course of works being carried out the person in charge of the works is required to report the discovery to the Secretary of the Office of Aboriginal Affairs Victoria (OAAV) as soon as practicable.
- It is an offence to knowingly harm Aboriginal cultural heritage unless permitted by Section 29 of the Aboriginal Heritage Act 2006 and penalties apply.

Date Issued: 25 July 2022

Signature for the Responsible Authority:

A handwritten signature in black ink, appearing to read "Daniel Murphy".

Daniel Murphy

PLANNING APPEALS COORDINATOR

## VCAT ISSUED PERMIT

### IMPORTANT INFORMATION ABOUT THIS PERMIT (see over)

#### WHAT HAS BEEN DECIDED?

The responsible authority has issued a permit at the direction of the Victorian Civil and Administrative Tribunal.  
(Note: This is not a permit granted under Division 5 or 6 of Part 4 of the **Planning and Environment Act 1987**.)

#### CAN THE RESPONSIBLE AUTHORITY AMEND THIS PERMIT?

The responsible authority may amend this permit under Division 1A of Part 4 of the **Planning and Environment Act 1987**.

#### WHEN DOES A PERMIT BEGIN?

A permit operates:

- from the date specified in the permit; or
- if no date is specified, from—
  - (i) the date of the decision of the Victorian Civil and Administrative Tribunal, if the permit was issued at the direction of the Tribunal; or
  - (ii) the date on which it was issued, in any other case.

#### WHEN DOES A PERMIT EXPIRE?

1. A permit for the development of land expires if—
  - the development or any stage of it does not start within the time specified in the permit; or
  - the development requires the certification of a plan of subdivision or consolidation under the Subdivision Act 1988 and the plan is not certified within two years of the issue of the permit, unless the permit contains a different provision; or
  - the development or any stage is not completed within the time specified in the permit, or, if no time is specified, within two years after the issue of the permit or in the case of a subdivision or consolidation within 5 years of the certification of the plan of subdivision or consolidation under the **Subdivision Act 1988**.
2. A permit for the use of land expires if—
  - the use does not start within the time specified in the permit, or if no time is specified, within two years after the issue of the permit; or
  - the use is discontinued for a period of two years.
3. A permit for the development and use of land expires if—
  - the development or any stage of it does not start within the time specified in the permit; or
  - the development or any stage of it is not completed within the time specified in the permit, or, if no time is specified, within two years after the issue of the permit; or
  - the use does not start within the time specified in the permit, or, if no time is specified, within two years after the completion of the development; or
  - the use is discontinued for a period of two years.
4. If a permit for the use of land or the development and use of land or relating to any of the circumstances mentioned in section 6A(2) of the **Planning and Environment Act 1987**, or to any combination of use, development or any of those circumstances requires the certification of a plan under the **Subdivision Act 1988**, unless the permit contains a different provision—
  - the use or development of any stage is to be taken to have started when the plan is certified; and
  - the permit expires if the plan is not certified within two years of the issue of the permit.
5. The expiry of a permit does not affect the validity of anything done under that permit before the expiry.

#### WHAT ABOUT REVIEWS?

- The person who applied for the permit may apply for a review of any condition in the permit unless it was granted at the direction of the Victorian Civil and Administrative Tribunal, in which case no right of review exists.
- An application for review must be lodged within 60 days after the permit was issued, unless a notice of decision to grant a permit has been issued previously, in which case the application for review must be lodged within 60 days after the giving of that notice.
- An application for review is lodged with the Victorian Civil and Administrative Tribunal.
- An application for review must be made on the relevant form which can be obtained from the Victorian Civil and Administrative Tribunal, and be accompanied by the applicable fee.
- An application for review must state the grounds upon which it is based.
- A copy of an application for review must also be served on the responsible authority.
- Details about applications for review and the fees payable can be obtained from the Victorian Civil and Administrative Tribunal.

The contact details of the Victorian Civil and Administrative Tribunal are:

55 King Street, MELBOURNE VIC 3000. Telephone: (03) 9628 9777, Fax: (03) 9628 9789.

<http://www.vcat.vic.gov.au/>

# VCAT Directed Plans

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The Victorian Government acknowledges the Traditional Owners of Victoria and pays respects to their ongoing connection to their Country, History and Culture. The Victorian Government extends this respect to their Elders, past, present and emerging.

REGISTER SEARCH STATEMENT (Title Search) Transfer of Land Act 1958

VOLUME 10988 FOLIO 113

Security no : 124107042373X  
Produced 21/06/2023 04:10 PM

## LAND DESCRIPTION

Lot 1 on Title Plan 824435F.  
PARENT TITLE Volume 10711 Folio 317  
Created by instrument AE832538F 10/01/2007

## REGISTERED PROPRIETOR

Estate Fee Simple  
Sole Proprietor  
NAN XIN HAWTHORN PTY LTD of 18 MYRTLE STREET GLEN WAVERLEY VIC 3150  
AT702257L 19/10/2020

## ENCUMBRANCES, CAVEATS AND NOTICES

Any encumbrances created by Section 98 Transfer of Land Act 1958 or Section 24 Subdivision Act 1988 and any other encumbrances shown or entered on the plan set out under DIAGRAM LOCATION below.

## DIAGRAM LOCATION

SEE TP824435F FOR FURTHER DETAILS AND BOUNDARIES

## ACTIVITY IN THE LAST 125 DAYS

NIL

-----END OF REGISTER SEARCH STATEMENT-----

Additional information: (not part of the Register Search Statement)

Street Address: 21 QUEENS AVENUE HAWTHORN VIC 3122

## ADMINISTRATIVE NOTICES

NIL

eCT Control 19431P RIGBY COOKE LAWYERS  
Effective from 19/10/2020

DOCUMENT END

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The Victorian Government acknowledges the Traditional Owners of Victoria and pays respects to their ongoing connection to their Country, History and Culture. The Victorian Government extends this respect to their Elders, past, present and emerging.

REGISTER SEARCH STATEMENT (Title Search) Transfer of Land Act 1958

VOLUME 11841 FOLIO 781

Security no : 124107042418Y

Produced 21/06/2023 04:10 PM

## LAND DESCRIPTION

Land in Plan of Consolidation 376437X.

PARENT TITLES :

Volume 10255 Folio 018 to Volume 10255 Folio 021

Volume 10314 Folio 873

Created by instrument PC376437X 07/12/2016

## REGISTERED PROPRIETOR

Estate Fee Simple

Sole Proprietor

NAN XIN HAWTHORN PTY LTD of 18 MYRTLE STREET GLEN WAVERLEY VIC 3150

AT702257L 19/10/2020

## ENCUMBRANCES, CAVEATS AND NOTICES

Any encumbrances created by Section 98 Transfer of Land Act 1958 or Section 24 Subdivision Act 1988 and any other encumbrances shown or entered on the plan set out under DIAGRAM LOCATION below.

## DIAGRAM LOCATION

SEE PC376437X FOR FURTHER DETAILS AND BOUNDARIES

## ACTIVITY IN THE LAST 125 DAYS

NIL

-----END OF REGISTER SEARCH STATEMENT-----

Additional information: (not part of the Register Search Statement)

Street Address: 23 QUEENS AVENUE HAWTHORN VIC 3122

## ADMINISTRATIVE NOTICES

NIL

eCT Control 19431P RIGBY COOKE LAWYERS

Effective from 19/10/2020

DOCUMENT END

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# PLANNING PROPERTY REPORT

From [www.planning.vic.gov.au](http://www.planning.vic.gov.au) at 21 June 2023 04:29 PM

## PROPERTY DETAILS

Address: **21 QUEENS AVENUE HAWTHORN 3122**  
Lot and Plan Number: **Lot 1 TP824435**  
Standard Parcel Identifier (SPI): **1\TP824435**  
Local Government Area (Council): **BOROONDARA**  
Council Property Number: **435780**  
Planning Scheme: **Boroondara**  
Directory Reference: **Melway 45 F10**

[www.boroondara.vic.gov.au](http://www.boroondara.vic.gov.au)

[Planning Scheme - Boroondara](#)

## UTILITIES

Rural Water Corporation: **Southern Rural Water**  
Melbourne Water Retailer: **Yarra Valley Water**  
Melbourne Water: **Inside drainage boundary**  
Power Distributor: **CITIPOWER**

## STATE ELECTORATES

Legislative Council: **SOUTHERN METROPOLITAN**  
Legislative Assembly: **HAWTHORN**

## OTHER

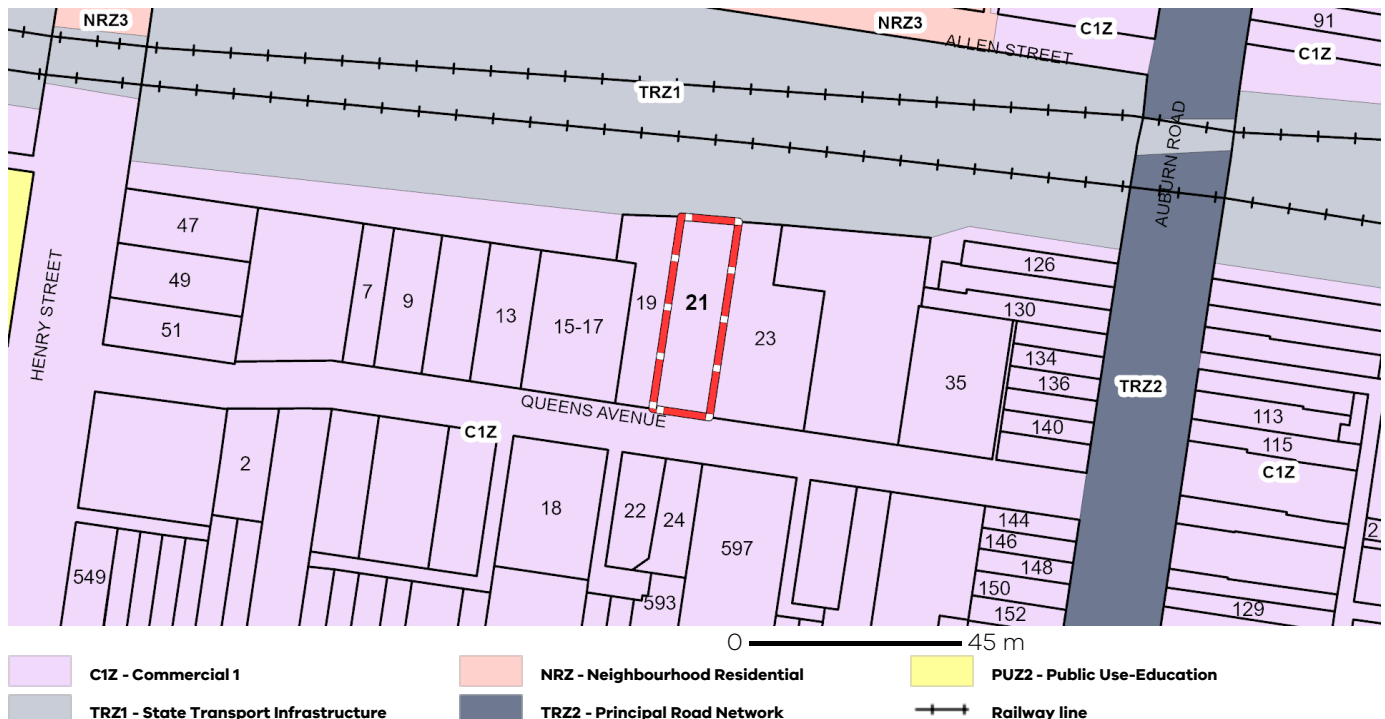
Registered Aboriginal Party: **Wurundjeri Woi Wurrung Cultural Heritage Aboriginal Corporation**

[View location in VicPlan](#)

## Planning Zones

[COMMERCIAL 1 ZONE \(C1Z\)](#)

[SCHEDULE TO THE COMMERCIAL 1 ZONE \(C1Z\)](#)



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# PLANNING PROPERTY REPORT

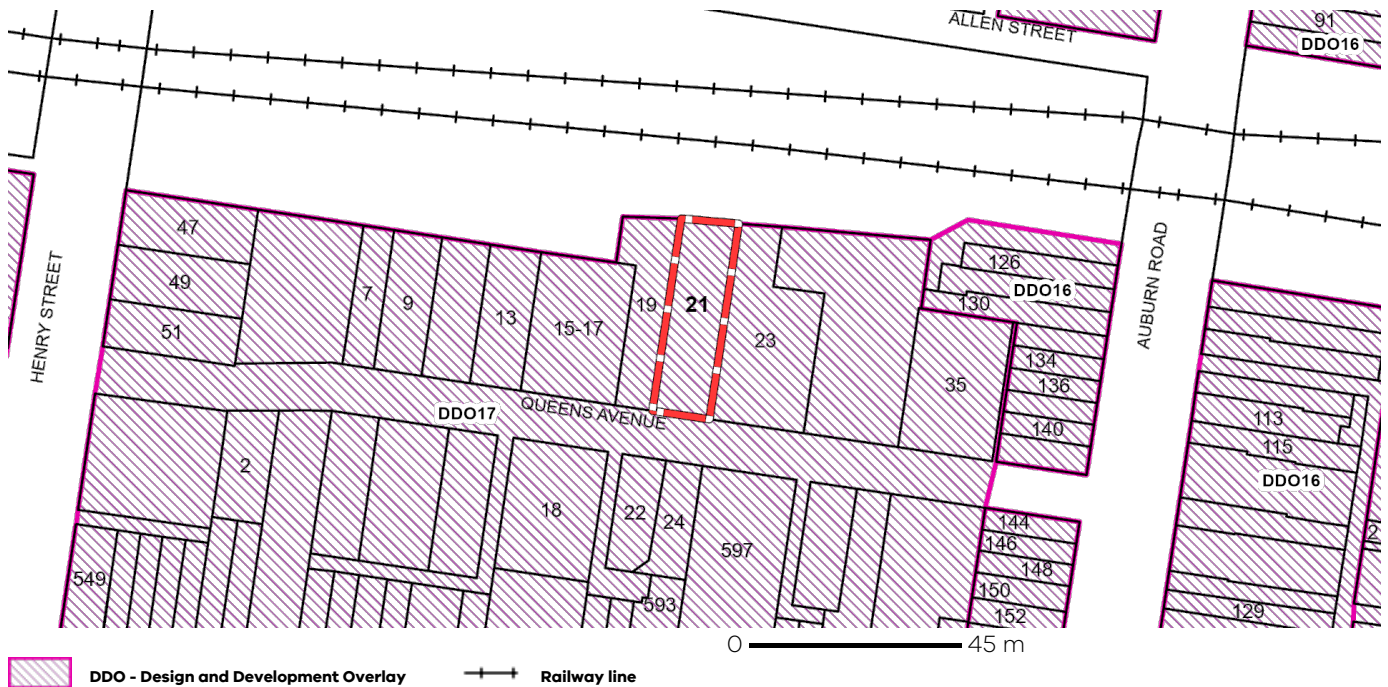
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### Planning Overlays

[DESIGN AND DEVELOPMENT OVERLAY \(DDO\)](#)

[DESIGN AND DEVELOPMENT OVERLAY - SCHEDULE 17 \(DDO17\)](#)



[ENVIRONMENTAL AUDIT OVERLAY \(EAO\)](#)



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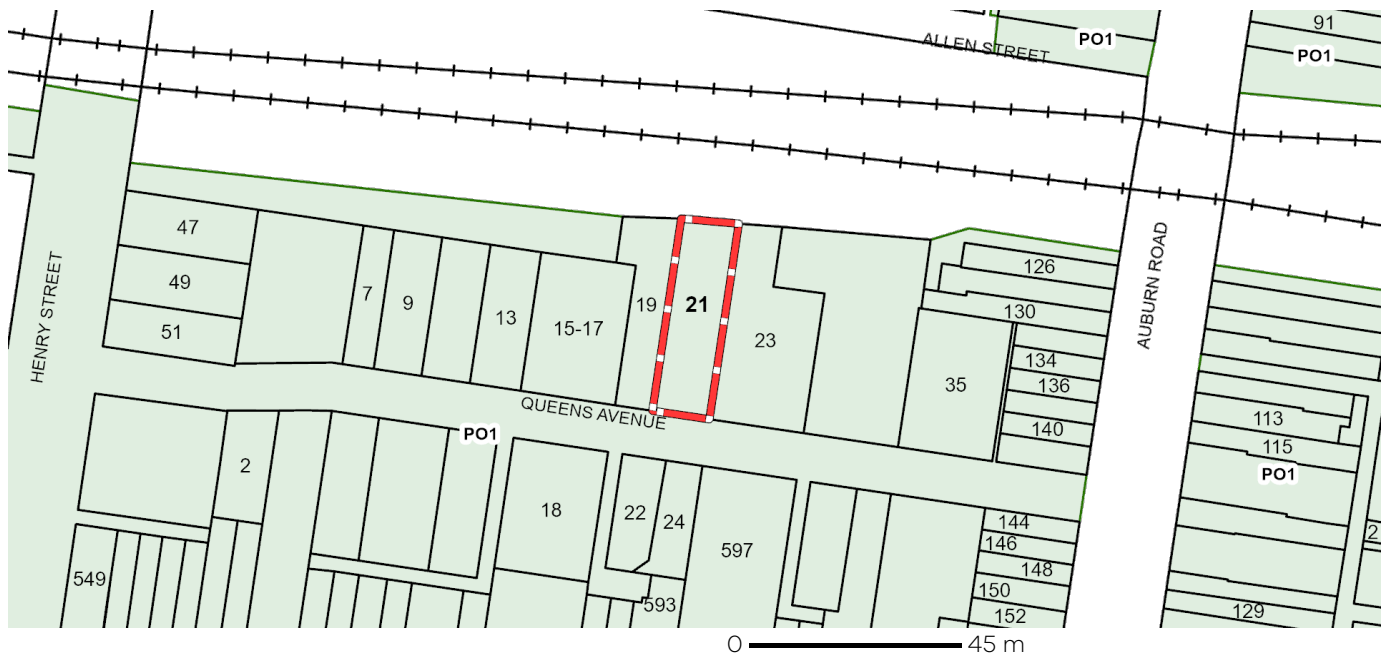
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[PARKING OVERLAY \(PO\)](#)

[PARKING OVERLAY - PRECINCT 1 SCHEDULE \(PO1\)](#)



**PO - Parking Overlay**

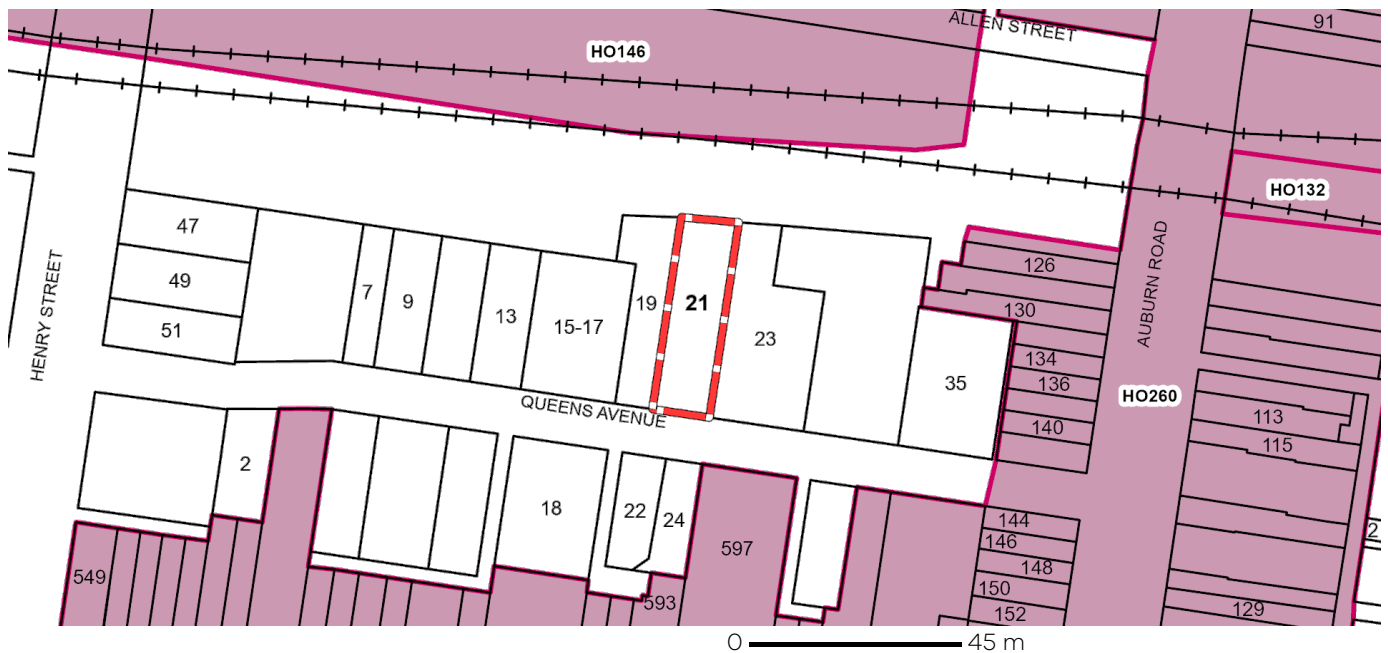
**Railway line**

Note: due to overlaps, some overlays may not be visible, and some colours may not match those in the legend

### OTHER OVERLAYS

Other overlays in the vicinity not directly affecting this land

[HERITAGE OVERLAY \(HO\)](#)



**HO - Heritage Overlay**

**Railway line**

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## PLANNING PROPERTY REPORT

### Further Planning Information

Planning scheme data last updated on 14 June 2023.

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# PLANNING PROPERTY REPORT

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### Designated Bushfire Prone Areas

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No special bushfire construction requirements apply. Planning provisions may apply.

Where part of the property is mapped as BPA, if no part of the building envelope or footprint falls within the BPA area, the BPA construction requirements do not apply.

Note: the relevant building surveyor determines the need for compliance with the bushfire construction requirements.



Designated BPA are determined by the Minister for Planning following a detailed review process. The Building Regulations 2018, through adoption of the Building Code of Australia, apply bushfire protection standards for building works in designated BPA.

Designated BPA maps can be viewed on VicPlan at <https://mapshare.vic.gov.au/vicplan/> or at the relevant local council.

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### Native Vegetation

Native plants that are indigenous to the region and important for biodiversity might be present on this property. This could include trees, shrubs, herbs, grasses or aquatic plants. There are a range of regulations that may apply including need to obtain a planning permit under Clause 52.17 of the local planning scheme. For more information see [Native Vegetation \(Clause 52.17\)](#) with local variations in [Native Vegetation \(Clause 52.17\) Schedule](#)

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# PLANNING PROPERTY REPORT

From [www.planning.vic.gov.au](http://www.planning.vic.gov.au) at 21 June 2023 04:29 PM

## PROPERTY DETAILS

Address: **23 QUEENS AVENUE HAWTHORN 3122**  
Lot and Plan Number: **Plan PC376437**  
Standard Parcel Identifier (SPI): **PC376437**  
Local Government Area (Council): **BOROONDARA**  
Council Property Number: **699320**  
Planning Scheme: **Boroondara**  
Directory Reference: **Melway 45 F10**

[www.boroondara.vic.gov.au](http://www.boroondara.vic.gov.au)

[Planning Scheme - Boroondara](#)

## UTILITIES

Rural Water Corporation: **Southern Rural Water**  
Melbourne Water Retailer: **Yarra Valley Water**  
Melbourne Water: **Inside drainage boundary**  
Power Distributor: **CITIPOWER**

## STATE ELECTORATES

Legislative Council: **SOUTHERN METROPOLITAN**  
Legislative Assembly: **HAWTHORN**

## OTHER

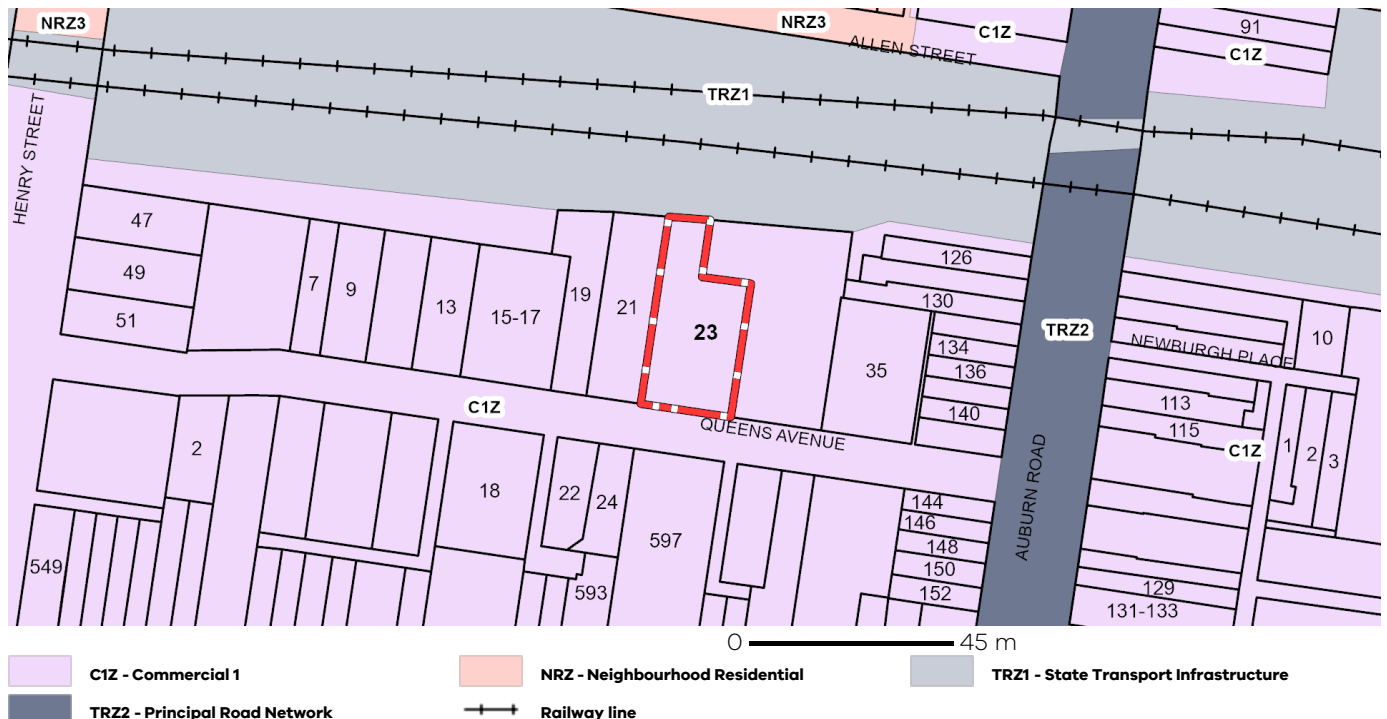
Registered Aboriginal Party: **Wurundjeri Woi Wurrung Cultural Heritage Aboriginal Corporation**

[View location in VicPlan](#)

## Planning Zones

[COMMERCIAL 1 ZONE \(C1Z\)](#)

[SCHEDULE TO THE COMMERCIAL 1 ZONE \(C1Z\)](#)



Note: labels for zones may appear outside the actual zone - please compare the labels with the legend.

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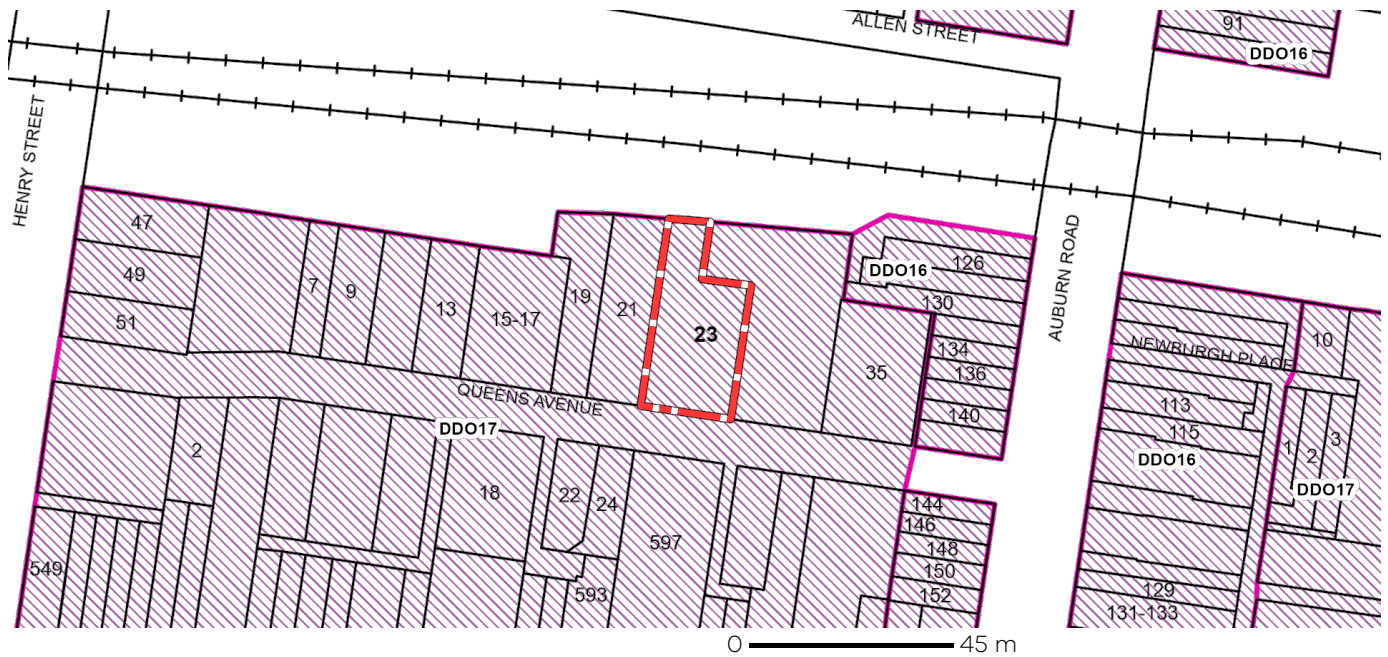
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[DESIGN AND DEVELOPMENT OVERLAY - SCHEDULE 17 \(DDO17\)](#)

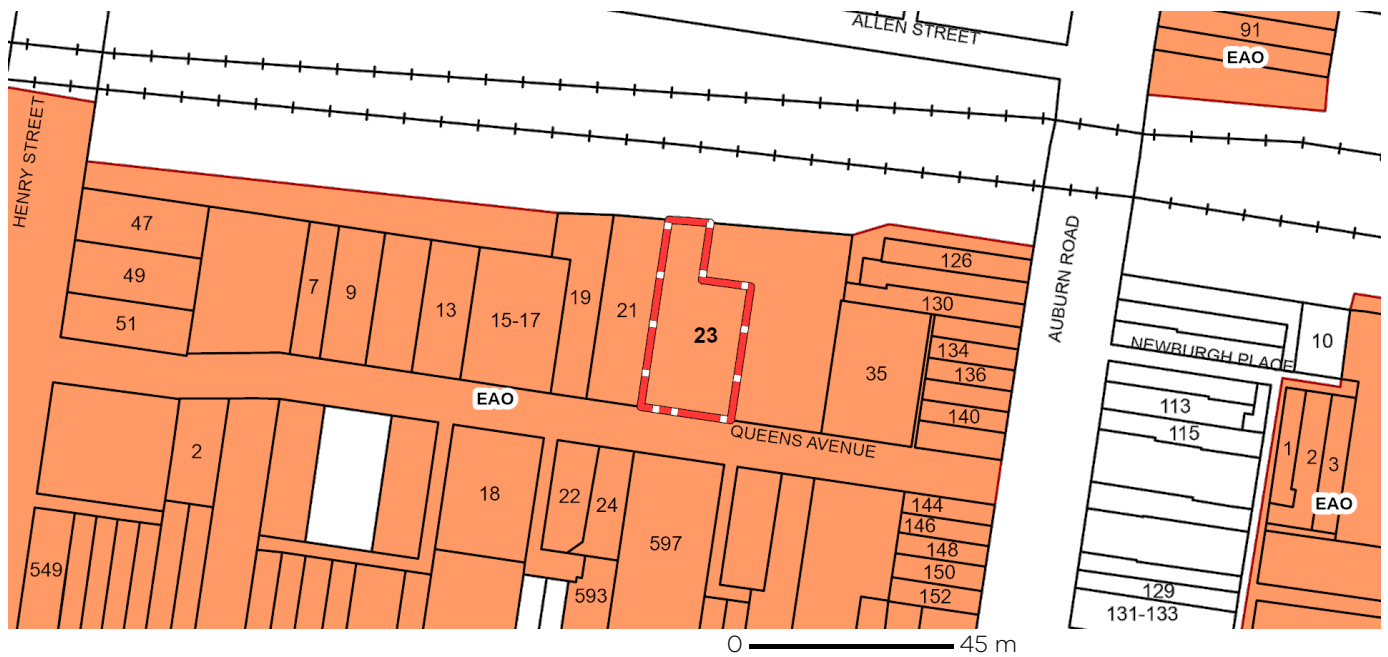


DDO - Design and Development Overlay

Railway line

Note: due to overlaps, some overlays may not be visible, and some colours may not match those in the legend

[ENVIRONMENTAL AUDIT OVERLAY \(EAO\)](#)



EAO - Environmental Audit Overlay

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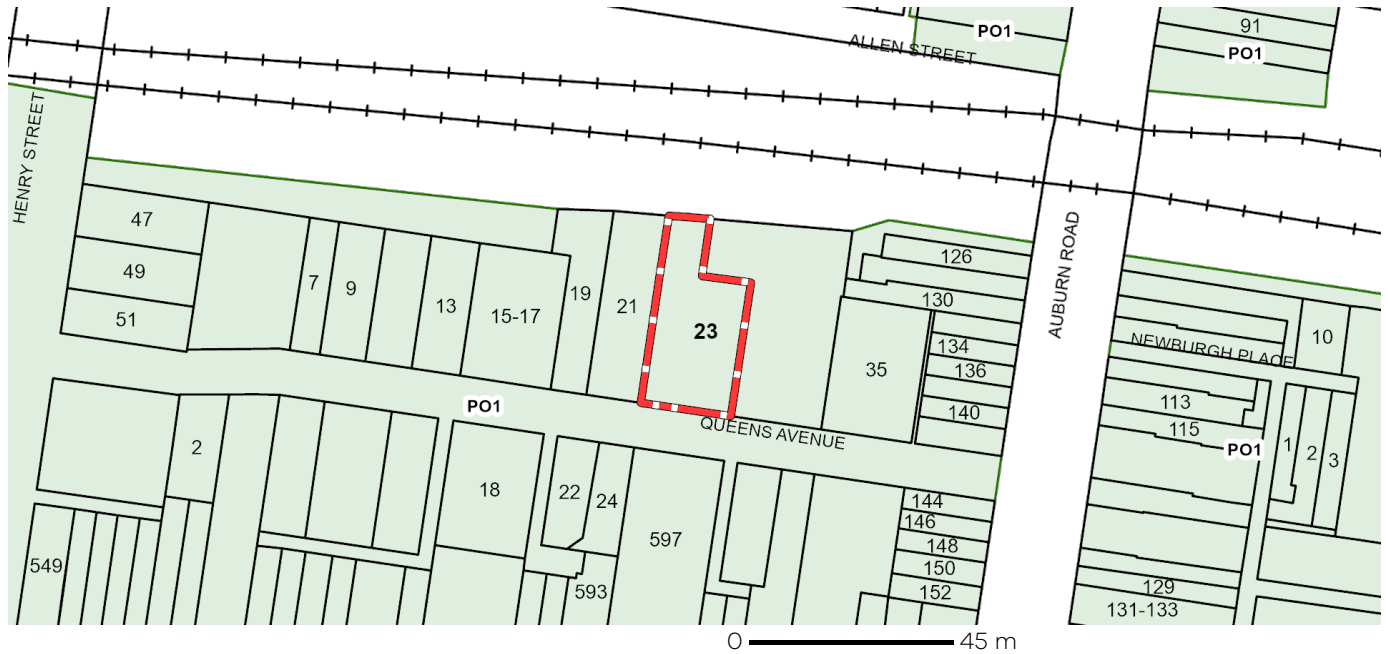
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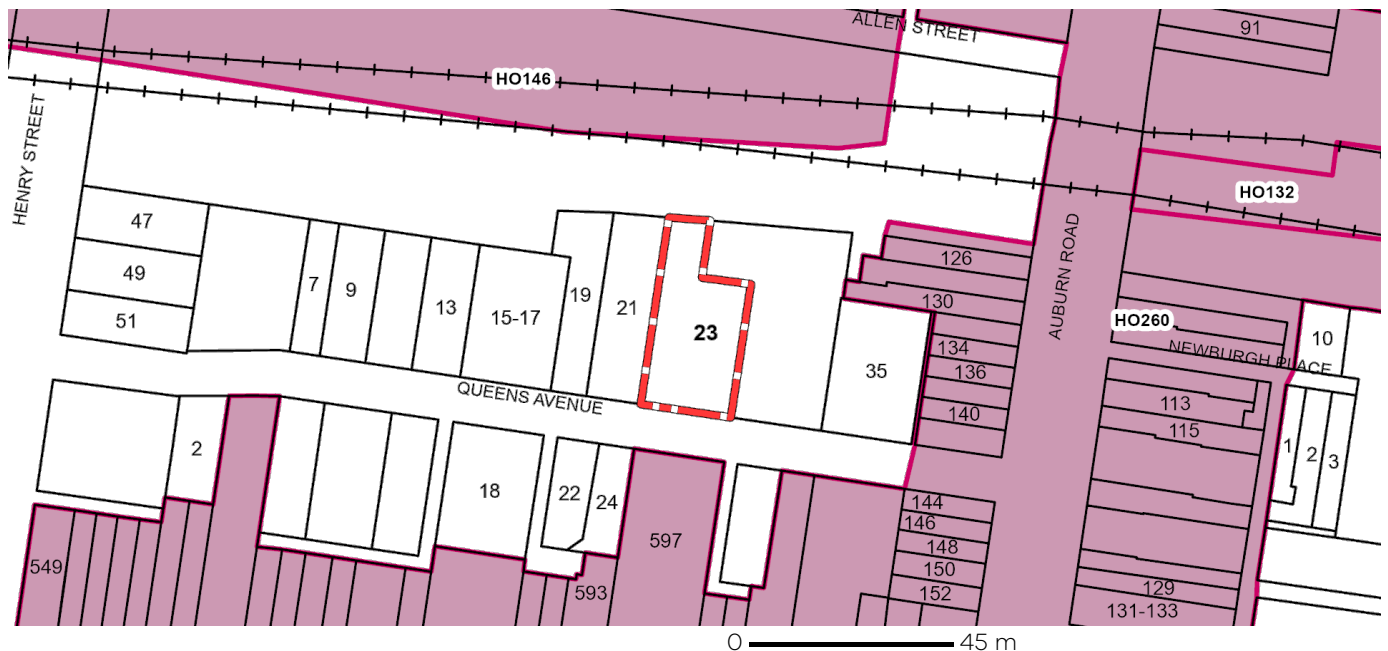
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## PLANNING PROPERTY REPORT

# VCAT Directed Plans

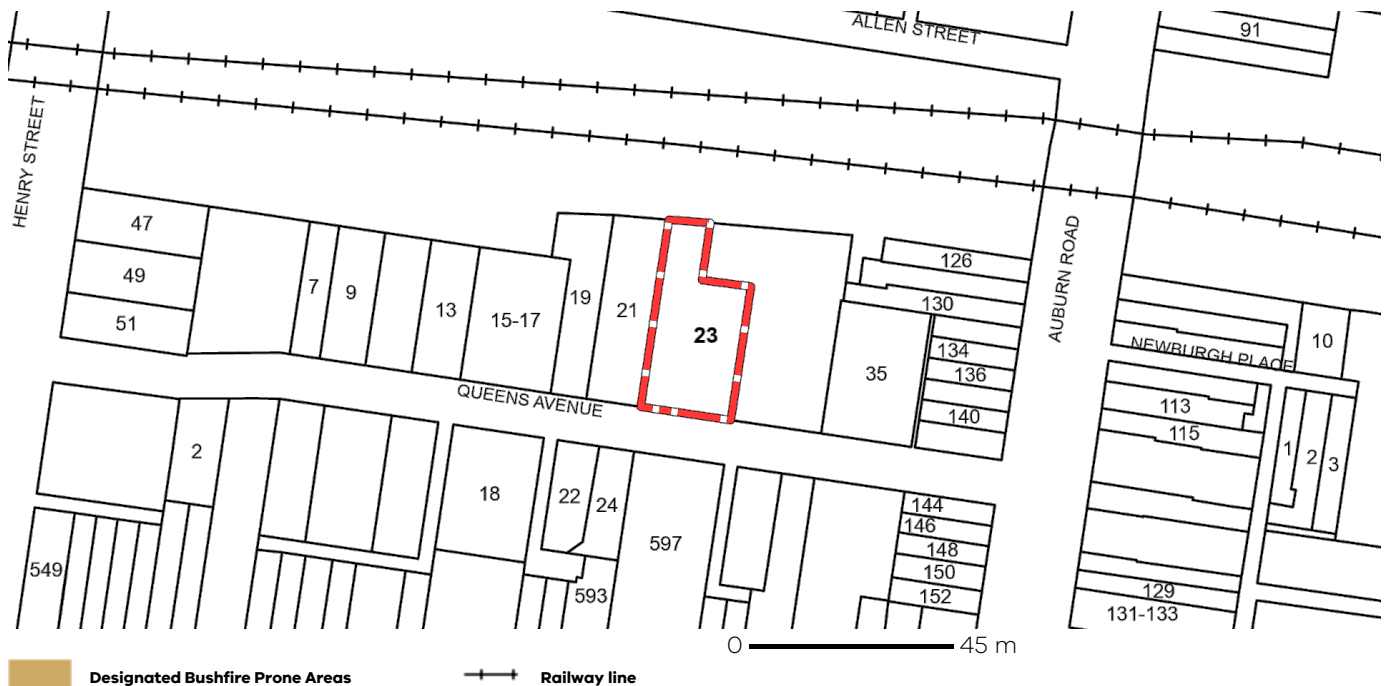
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VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P11937/2021  
PERMIT APPLICATION NO.PP21/0610

## CATCHWORDS

Section 79 *Planning and Environment Act 1987*; Commercial 1 Zone; Design and Development Overlay-Schedule 17; Commercial Corridor; Student Accommodation; Building design and height; Car parking.

<b>APPLICANT</b>	Nan Xin Hawthorn Pty Ltd
<b>RESPONSIBLE AUTHORITY</b>	Boroondara City Council
<b>REFERRAL AUTHORITY</b>	Head, Transport for Victoria - Metro South East
<b>SUBJECT LAND</b>	21-27 Queens Avenue HAWTHORN VIC 3122
<b>HEARING TYPE</b>	Hearing
<b>DATE OF HEARING</b>	6 and 7 June 2022
<b>DATE OF ORDER</b>	7 July 2022
<b>CITATION</b>	Nan Xin Hawthorn Pty Ltd v Boroondara CC [2022] VCAT 748

## ORDER

- 1 Pursuant to clause 64 of Schedule 1 of the *Victorian Civil and Administrative Tribunal Act 1998*, the permit application is amended by substituting for the permit application plans, the following plans filed with the Tribunal:

- Prepared by: Plus Architecture
- Drawing numbers: Revision 2
- Dated: 26 April 2022

### Permit granted

- 2 In application P11937/2021 the decision of the responsible authority is set aside.
- 3 In planning permit application PP21/0610 a permit is granted and directed to be issued for the land at 21-27 Queens Avenue HAWTHORN VIC 3122 in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:
  - Construction of a 10-storey building for the use of student accommodation, ground floor retail premises and a reduction in the



# VCAT Directed Plans

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standard car parking requirements for the retail premises in accordance with the endorsed plans.

Megan Carew  
**Member**

Stephen Axford  
**Member**

## APPEARANCES

For applicant

J Cicero, Solicitor

Assisted by E Mahoney, Solicitor, both of  
Best Hooper

They called the following witnesses:

M Sheppard, Urban Designer

C Dunstan, Traffic Engineer

For responsible authority

D Song, Town Planning Consultant, Song  
Bowden



# VCAT Directed Plans

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## INFORMATION

Description of proposal	Construction of a 10-storey building for the use of student accommodation, with ground floor retail premises and a single basement for 14 car spaces and services.
Nature of proceeding	Application under section 79 of the <i>Planning and Environment Act 1987</i> – to review the failure to grant a permit within the prescribed time. <sup>1</sup>
Planning scheme	Boroondara Planning Scheme
Zone and overlays	Commercial 1 Zone (C1Z) Design and Development Overlay- Schedule 17 (DDO17) Environmental Audit Overlay Parking Overlay- Schedule 1
Permit requirements	Clause 34.01-1 Use of land for student accommodation in the C1Z. Clause 34.01-4 Buildings and works in the C1Z. Clause 43.02 Buildings and works in the DDO17. Clause 52.06 Reduction in car parking requirements for the retail premises.
Relevant scheme policies and provisions	Clauses 2, 11, 15, 16, 17, 18, 34.01, 43.02, 52.06, 52.34, 65 and 71.02.
Land description	The review site is located on the north site of Queens Avenue. It comprises two allotments that together have a frontage to Queens Avenue of 32.24m and a total site area of 1217m <sup>2</sup> . There are two separate industrial buildings on the land. The site is part of the Burwood Road/ Camberwell Road Commercial Corridor and is proximate to the Auburn Activity Centre to the east. The railway line and Auburn station are located to the north.

<sup>1</sup> Section 4(2)(d) of the *Victorian Civil and Administrative Tribunal Act 1998* states a failure to make a decision is deemed to be a decision to refuse to make the decision.



# VCAT Directed Plans

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Tribunal inspection

We inspected the review site and its environs following the hearing.



# VCAT Directed Plans

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## REASONS?

### WHAT IS THIS PROCEEDING ABOUT?

- 1 This hearing concerns an application for a ten-storey apartment building for student housing on a site with an existing permit<sup>3</sup> for a similar proposal with effectively the same building envelope. However, there is a different architectural expression and some other changes related to the change from a conventional residential use to that of student housing.
- 2 The existing permit was the result of a previous VCAT Hearing (*Queens Avenue Developments Pty Ltd v Boroondara CC* [2018] VCAT 629) which resulted in the granting of a permit. We were informed that this permit has recently been extended so it can be regarded as current<sup>4</sup>. No plans have been endorsed and the site has since changed hands leading to the revised proposal, however the existing permit could still be acted upon.
- 3 The parties agreed that the existing permit was a relevant consideration. It was agreed that the context had not changed since the previous decision (although the adjoining development at 29-31 Queens Avenue was now complete). The policy context is also generally unchanged apart from a recent amendment to translate the Boroondara planning scheme into the new format. The parties agreed that as far as this proposal is concerned, that translation is policy neutral<sup>5</sup>.
- 4 In summary the Council argues that although the built form is essentially unchanged from that of the permitted scheme, the architectural expression is inferior and does not rise to the standard of exemplary design. In addition, Council says the internal amenity of the units is poor because too many are single aspect and south facing, which they say is critical given the very small size of the individual units. Council also says the provision of car parking is very low and below what is needed, which will impact upon both the future residents and add to competition for parking in the local streets. Due to these deficiencies, Council says that there is not sufficient justification to exceed the preferred height limit of seven stories set by the Design and Development Overlay (DDO17)
- 5 The applicant argues that while the architectural expression is different to the present proposal, it has similar elements and, in some respects, improves on the presentation - for example, to Queens Parade. They relied upon the evidence of two expert witnesses in urban design and traffic

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<sup>2</sup> The submissions and evidence of the parties, any supporting exhibits given at the hearing and the statements of grounds filed have all been considered in the determination of the proceeding. In accordance with the practice of the Tribunal, not all of this material will be cited or referred to in these reasons.

<sup>3</sup> Permit PP16/00827 issued on 15 May 2018.

<sup>4</sup> The permit expires on 15 May 2023 if the development has not commenced.

<sup>5</sup> Amendment C354 approved on 26 May 2022.



engineering to support the proposition that the additional height, which is slightly lower than that of the permitted scheme, is justified.

- 6 We must decide if a permit should be granted and if so, what conditions should apply. Having inspected the review site and considering the policy and provisions of the Boroondara Planning Scheme we have determined to set aside the decision of the responsible authority and grant a permit subject to conditions. Our reasons follow.

## WHAT ARE THE KEY ISSUES?

- 7 While this is a new application that must be considered on its merits, the parties in this proceeding agreed that matters such as amenity impacts upon neighbours, overshadowing and equitable development are effectively unchanged from the existing permit as the built form remains nearly identical. These matters were considered in detail by the previous Tribunal. We have reviewed these matters in respect to the application before us and agree with the findings of the previous Tribunal. Where these issues need to be revisited, we have done so, for example requiring a student management plan for the new use to satisfactorily address amenity impacts.
- 8 The disputed issues in this case are generally limited to the changes in architectural expression, changes in the design arrangement related to the different use, changes to parking arrangements and some issues relating to internal amenity.
- 9 There was no dispute that the site was suitable for redevelopment, nor that the mix of uses now proposed was acceptable. We adopt the background analysis provided by the previous Tribunal and the findings that the site will contribute to the commercial corridor and the nearby activity centre.
- 10 We find our task is to answer the following key questions:
  - Does the design of the present proposal justify its exceedance of the recommended height limit?
  - Is internal amenity acceptable?
  - Is the proposed parking provision acceptable, firstly for the student housing, and secondly, for the retail component?
- 11 We have also considered the potential impact upon the rail infrastructure including an existing communications tower and the connection to a pedestrian path that presently exists to the north of the site, on railway land. VicTrack was an objector to the application.

## DOES THE DESIGN OF THE PRESENT PROPOSAL JUSTIFY ITS EXCEEDANCE OF THE RECOMMENDED HEIGHT LIMIT?

- 12 The main built form guidance for the review site is the Design and development Overlay Schedule 17 (DDO17). This overlay applies to the identified commercial corridors and the site is located within area 7 of the

Burwood Road/ Camberwell Road commercial corridor. The objectives of the control are:

- To ensure the height and setbacks of development enhances the established streetscape and commercial character of the corridor.
- To achieve innovative, high quality architectural design that makes efficient use of land whilst enhancing the appearance and strengthening the identity of the commercial corridors.
- To ensure appropriate development that is complementary to the existing neighbourhood character and has regard to adjoining residential amenity.
- To ensure development respects and enhances identified heritage buildings and precincts.

13 As discussed above, the focus of the dispute revolves around the implementation of the DDO17 that applies to this precinct. A permit is required for buildings and works and any proposal must be assessed against the objectives of the overlay. Within Area 7 a maximum street wall height of 11m is specified with a minimum upper storey setback of 5m and an overall maximum building height of 22m. The street wall and setback requirements are met, but the permitted scheme allows for a built form that rises to ten storeys (31.9m), three above the preferred height set out in DDO17. DDO17 says

A permit may be granted where the maximum overall building height requirements in the relevant Table and as specified in the building height and setback requirements of this Schedule are not met.

Where the applicant demonstrates, to the satisfaction of the responsible authority, that all of the following would be satisfied:

- The proposed development would achieve the design objectives of this schedule and relevant policy and provisions of this planning scheme.
- The development is of an exemplary quality design that would make a positive contribution to the character of the neighbourhood.
- The additional height would:
  - result in specific design benefits, and
  - not have an adverse impact on heritage values, the public realm or the amenity of adjoining properties.

14 Council agreed the punctuation in this section (with a full stop after ‘met’) is a little confusing<sup>6</sup>, but maintained the meaning is clear that the dot points

<sup>6</sup> A review of the history of this planning control reveals that the punctuation was originally a colon (Amendment C108) and that this has since dropped off. The grammatical error was also previously identified by the Tribunal in *Norfolk Park Projects Pty Ltd v Boroondara CC* [2018] VCAT 1293.

# VCAT Directed Plans

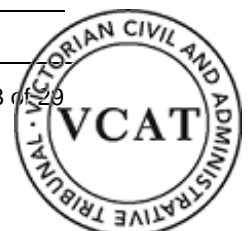
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following this must all be met to justify exceeding the preferred height limit. The applicant submits that the above points are decision guidelines for consideration, not pre-conditions. We find that the latter interpretation is the correct one. This was also the view of the Tribunal in *Norfolk Park Projects Pty Ltd v Boroondara CC* [2018] VCAT 1293:

- 35 The requirement is not mandatory and must be assessed in context of achieving the objectives of Clause 43.02 and the schedule of DDO17. This is because the requirement can be varied with a permit based on the provisions of Clause 43.02. The decision guidelines in Clause 43.02 also direct a need to consider the requirements of the schedule, so in turn the requirement becomes a decision guideline of the permit trigger set out in clause 43.02. This is consistent with the findings in *W Property Group Pty Ltd v Boroondara CC*<sup>7</sup> where the tribunal commented that the key issue is that building achieves a built form that is consistent with the outcomes encouraged by the applicable policy framework and the design objectives of DDO17.
- 36 The key issue is therefore whether the design objectives are met, with consideration to the requirement of whether the proposal achieves specific design benefits, is of exemplary quality, and does not adversely affect the amenity of the area.
- 15 Council acknowledged that the previous decision means ‘in principle’ it cannot be said that a ten-storey form is not acceptable on the subject site. However, Council says that in approving the ten-storey building on this site, the Tribunal, in the previous decision, had formed the view that all of the criteria above were met and that the development was an exemplar quality design. The Council acknowledged that the term ‘design’ as applied in the DDO is not limited to appearance or aesthetics but can include all aspects of the design of a building including functional layout. The Council does raise some issues with the functional layout of the building which we will discuss next, but primarily takes issue with the external appearance of the proposal now before us.
- 16 They say the present proposal falls short of an ‘exemplary’ standard. They cite the change to a ‘lower quality’ palette of materials, with an over emphasis of the red concrete. The change in the building materiality and finishes and the architectural composition of the building, as now proposed, is in Council’s submission, a reductive design outcome. It reduces the complex aesthetic of the approved development into a less sophisticated building form. They say there is a lack of variation in the façade design between the mid floors and upper three floors, which have effectively the same façade design and are distinguished mainly through the colour change and setback. In combination, they say this causes the overall building to be

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<sup>7</sup> [2017] VCAT 1238



# VCAT Directed Plans

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too visually dominant. They say the permitted proposal had a sophistication in its variation in materials and details, particularly between the mid-section and upper section, which the present proposal lacks. They say that these significant differences are evident in the comparison of the following photomontage views that are taken from similar locations.



Figure 1: The images above show the original scheme to the left and the presently proposed scheme to the right. Source: Council submission p 18.

- 17 Council noted this is not to say that the architecture of the building is unacceptable per se, it simply means that the building does not warrant the same ‘uplift’ in building height under the DDO17 criteria.
- 18 The applicant relied upon the evidence of Mr Sheppard, who provided urban design evidence for both the present proposal and for the previous proposal for which a permit was issued. He agreed that the composition and materiality of the present proposal is different from the previous scheme but did not agree that this results in a significantly inferior quality of design. He noted that although the red concrete finish of the mid-section is heavier, it is almost entirely within the preferred maximum building height where the DDO does not require it to be visually light-weight. He considered that the immediate context includes newer buildings of a range of designs.
- 19 Mr Sheppard said his interpretation of ‘exemplary quality design’ is design that represents an appropriate model for future development in the streetscape or surrounding area. He said this is consistent with the definition referred to in the previous decision that ‘exemplar’ is not defined and, ‘should be given its ordinary meaning which is: ‘serving as a model or pattern’ but does not mean ‘award winning’’. In other words, it is a ‘model worthy of being copied’ and ‘better or above an average standard’.

# VCAT Directed Plans

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- 20 We note that the previous Tribunal did not specifically adopt this definition but did refer to it. Council in this hearing accepted Mr Sheppard's definition. We agree this is a reasonable explanation of the intention in DDO17 setting this as a goal for the purposes of assessing this proposal before us.
- 21 The character of this street is varied. There are newer developments such as the one to the east, older industrial and commercial land uses and even remnant dwellings. Views along Queens Avenue to the east are set in a context of much higher development behind the shopping street to the east. To the west, the street provides views of the telecom exchange and higher development within the Swinburne University Precinct. While there is a heritage feel at the eastern end of the street, this is not present within Queens Avenue itself. The railway interface from the western end to just past the review site is uninviting but is clearly used to provide an informal link from the small seating area on Auburn Road to the east through to Henry Street.
- 22 DDO17 establishes a preferred character of street wall and with the development above to be setback. This has been adopted in the adjoining development to the east. The proposal before us also adopts a street wall, with a middle level and cap as is evident in Fig.1 above. At a pedestrian level, it is the street wall that will have presence, with views of the middle levels above. The street wall sits comfortably next to the adjoining development and is a significant improvement over the earlier approval due to the reduction in the vehicle access width, relocation of the substation and additional retail premises.
- 23 Council's urban designer did raise concern about the section of blank wall at the podium level facing west. It is presently relieved with a 'super-frame' that divides the otherwise smooth surface into four main segments, and evidently anticipates that future redevelopment will be built up to it. (see Figure 1 bottom right)
- 24 We find that the area of this wall is relatively limited in its exposure to the street, and the treatment while simple, provides a "robust" finish that we find is reminiscent of the industrial character that once dominated this street. We agree that it is quite likely it will be built over in the future, and until that occurs, we find that the proposed treatment is acceptable.
- 25 While the design of the middle levels is heavier in materiality than the existing approval, we find that the architectural design provides a good level of articulation and by de-emphasising the intermediate floors it will assist to reduce the perceived scale of the building. As such, we find it will not dominate the streetscape and that it will sit comfortably adjacent to the completed development next door.
- 26 We support the use of the vertical blades which will create light and shade. We are not concerned about the soft red colour given the wide variety of



materials, colours and finishes within this street. The conditions require the detail of this finish and its quality be provided to Council (including physical samples).

- 27 We find that the two upper storeys that make up the built form above the recommended height will be perceived as a “lightweight cap” because of their light colour and additional setback. We find their will be limited visibility from directly adjacent but accept that it will be visible at a distance from Auburn Road over the adjoining development to the east. It will also be visible from the west until such time as the intervening properties are developed. In the context of taller development visible in the distance from both directions, as described previously, we find this to be acceptable.
- 28 Following our site inspection, we assess that the upper form will be able to be viewed from the north side of the railway line within Allen Street above the vegetation along the rail corridor. Glimpses of this additional built form will be at a distance and will be filtered by the extensive vegetation in the rail corridor. We find that this will ensure that the additional height is not dominant.
- 29 In addition, we accept that the layout of the student housing, with a good variety of single and shared facility apartments, and a variety of well-designed communal spaces including study spaces, recreation spaces and outdoor entertainment spaces, is representative of the leading design approaches in this field and contributes toward our finding that this is an exemplary design.
- 30 We find that the overall design response, including the additional height is acceptable and that the development achieves the objectives of the overlay for the following reasons:
  - The architectural composition, while different is of an exemplary quality design.
  - It would make a positive contribution to the character of the neighbourhood because of the significantly improved outcome at street level.
  - The proposal retains the specific design benefit of the walkway/ mid block connection.
  - The student housing is provided to a very high standard.
  - There is no adverse impact on heritage values, the public realm or the amenity of adjoining properties.
- 31 Council’s urban designer expressed concern about the extent of wall to the proposed public walkway to the rear of the site. This is extensively affected by graffiti at present. Mr Sheppard recommended that the wall have a pattern. The adjoining development has employed both texture to the wall

and hanging rosemary in planters to address this issue. We noted on our inspection that the hanging vegetation was particularly effective. The landscape concept plan dated 26 April 2022 demonstrates that there is sufficient room within the planters to achieve a similar outcome on the review site. We support this through a permit condition.

## IS INTERNAL AMENITY ACCEPTABLE?

- 32 Mr Sheppard recommended that to ensure that an appropriate level of activation and privacy is maintained along the pedestrian link, they recommend that landscape strips be reintroduced along the western edge of the terraces and permeable fences are used. This is included in the permit conditions.
- 33 The Council expressed concern about the internal amenity of the student accommodation in terms of the number of small, south facing apartments on levels 3-6. Amendment VC216 was approved on 10 June 2022. The parties were provided with an opportunity to make further written submissions to this amendment by way of our interim order dated 14 June 2022. Council noted the recent changes of Amendment VC216 specifically to Clause 15.01-2S that now includes the objective 'to achieve building design and siting outcomes that contribute positively to the local context, enhance the public realm and support environmentally sustainable development'. Council submits that its concern about the single aspect south facing units is further amplified because of the amendment.
- 34 The applicant submits that the south facing rooms will have acceptable internal amenity in the context of the overall facilities available to students. The applicant acknowledged the changes to Clause 15.01-2S but submitted that the amendment did not introduce any specific ESD standards, metrics, quantitative performance outcomes or tools referenced in this new State Planning Policy. Such ESD standards, metrics, quantitative performance measurements are otherwise captured by Built Environment Sustainability Scorecard ('BESS'). The conditions include a requirement for a Sustainability Management Plan to address the overall standard of the development.
- 35 We find that the student accommodation will have a high level of internal amenity and is provided with facilities and services that will facilitate a village atmosphere and encourage community. We queried only the provision of communal space on levels 3-6. The applicant tabled a plan at the hearing demonstrating that these levels could be provided with a communal study area (Figure 2). We find that this change is important to the internal amenity of the student accommodation and have included it within the conditions.
- 36 In respect to the south facing rooms, we find that they will have sufficient access to daylight for a good level of internal amenity taking into

# VCAT Directed Plans

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consideration the original daylight modelling that accompanied the application. In addition, these south facing apartments will have an outlook to the street which will protect their amenity over time.

- 37 The applicant did indicate that there was an ability to provide for additional access to daylight for the southern internal corridor. This would require reconfiguration of the two-bedroom units at the south west corner of the development. On balance, we find that these rooms will add diversity to the student accommodation offering and that they should be retained.



Figure 2 Plan showing location for additional communal study space tabled at the hearing.

## IS THE CAR PARKING PROVISION ACCEPTABLE?

- 38 The proposal includes 14 car spaces (including one accessible space) within the basement for the student accommodation. No car parking is proposed for the retail component. Council submitted that this was insufficient and that there should be additional student parking as well as employee parking for the retail premises (accepting that customers could be accommodated on the street).
- 39 The planning scheme does not include a specific car parking requirement at Clause 52.06 or within the parking overlay for student accommodation. Council's traffic engineer applied the statutory rate associated with a 'rooming house' of one space per four bedrooms. We find that this land use term does not encompass the formal form of managed student accommodation of the type proposed here. Student accommodation is a

different land use. Mr Song accepted this and submitted that the rooming house rate of one space per four bedrooms could be considered a guide as to what may be acceptable to Council.

- 40 We had the benefit of the evidence of Ms Dunstan in this matter. Ms Dunstan undertook a car parking demand assessment for each use in accordance with Clause 52.06. In respect to the student accommodation, she found that:
- i. the demand for parking at student accommodation facilities is very low, with an average of only 0.06 cars per bedroom observed in similar developments where car parking is provided. The proposed level of car parking proposed for the student accommodation exceeds this rate.
  - ii. existing student accommodation developments that do provide car parking have ample vacant car parking (average usage rate of only 51%).
  - iii. students will be made aware of the car parking conditions on-site, and if there is not car parking available, they may seek alternative student accommodation options.
  - iv any staff of the retail premises will not be reasonably be able to park in the vicinity of the site and will seek alternative modes of transport. While there may be a demand for approximately 3 short-term customers spaces for the retail premises, these can be accommodated on-street in the nearby area.
- 41 We find that well located student housing facilities such as this generate relatively low car parking requirements. We find the evidence of Ms Dunstan of low or no vehicle ownership by international student occupants in like facilities to be persuasive. Her evidence is based on surveys of actual student accommodation, and she provided a detailed demand assessment. We consider that the proximity of this facility to both public transport (including rail) and Swinburne University supports reliance on alternative transport modes emphasised in the policy framework.
- 42 Even if more students were based locally, rather than being from overseas, if the students cannot obtain car parking on-site alternative arrangements would need to be made by them given the lack of availability of long-term parking within this area during the day.
- 43 We also find that the proposed reduction in parking provision for the retail premises staff (2 spaces) is acceptable given the site's location, accessibility, and lack of long-term parking in the area. We note that the demand assessment in Ms Dunstan's report suggests that only 12 car spaces would be required for the student use. It may be possible for the two extra car spaces to be allocated to retail staff if desired by the management of the building.

- 44 The acceptability of the design and layout of the access ramp and basement car parking was not in dispute between the parties.

## ARE THERE ANY OTHER ISSUES?

- 45 The application was initially referred to VicTrack under Section 52 of the *Planning and Environment Act 1987*. Council advised that the application was also referred to the Public Transport Division of the Department of Transport on 13 October 2021, however a response was not received.
- 46 VicTrack did object to the application. They advised that the land immediately adjoining the rear of the review site was controlled by VicTrack and was not available for public access to connect to the proposed building through link, although a lease arrangement existed to the east of the review site with Council for this purpose. Despite the fact that there is informal access along the rear of the site, this distinction appeared clear on our site visit where the path was maintained to the north eastern corner of the review site (see Figure 3).
- 47 We consider that the through link opportunity remains a positive outcome of the proposed development and it is presently approved in the existing permit. It will be up to the Council to negotiate with the authority the relevant lease of the land to the rear of the review site in a similar manner as for the land to the east.
- 48 The second concern raised by VicTrack was the proximity of the review site to its communications tower (DTRS tower) which is located about 16m from the north west corner of the review site. The tower is also depicted in Figure 3. VicTrack objected to the application on the basis that it will have unacceptable detrimental impacts on the functioning of the State Digital Train Radio Signalling system (DTRS) that will affect safety. VicTrack noted that:

There are currently difficulties in this system between Auburn and Camberwell due to the level of development which has interrupted the radio system's line of sight. The height of this equipment is 25m. The proposed building's height is significantly taller than our equipment.



Figure 3: Rear interface with DTRS tower behind. Photo: Tribunal's own

- 49 We are conscious of the policy framework that seeks to protect and enhance the public transport network. However, neither VicTrack nor the Head, Transport for Victoria sought to become a party to this proceeding nor provided further information in a statement of grounds. Given the fact that the existing planning permit for the review site has a very similar footprint and profile to the proposal before us, it would appear that both buildings will impact on the rail signal tower. It is likely that continuing development within this precinct will require reconsideration of the location of this infrastructure.
- 50 VicTrack indicated that ‘if these issues could be resolved, Victrack would seek to recommend standard conditions to Council prior to the issue of any permit to protect the rail corridor’. The conditions relating to the railway land were transposed by Council from the previous planning approval and we find these appropriate.

## WHAT CONDITIONS ARE APPROPRIATE?

- 51 In determining the conditions of permit we have had regard to the draft conditions circulated by Council and discussed at the hearing, the submissions and evidence of the parties and our reasons set out above. We have:
- Adopted the recommendations of Mr Sheppard, with a minor modification to include additional landscaping treatment to the retaining wall facing the pedestrian path, to minimise the risk of graffiti attack. We have included a requirement to add a communal study ‘nook’ to each of the mid-levels of the proposal as discussed in the hearing.

# VCAT Directed Plans

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- Updated the Environmental Audit conditions to refer to the new processes under the new Act.
- We have consolidated the conditions relating to the management of the student accommodation use into a single management plan requirement for simplicity of enforcement.
- We have included an expiry for the use in the conditions so that it is clear within the permit.

## CONCLUSION

52 For the reasons given above, the decision of the responsible authority is set aside. A permit is granted subject to conditions.

Megan Carew  
**Member**

Stephen Axford  
**Member**



# VCAT Directed Plans

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## APPENDIX A – PERMIT CONDITIONS

<b>PERMIT APPLICATION NO</b>	PP21/0610
<b>LAND</b>	21-27 Queens Avenue HAWTHORN VIC 3122

### WHAT THE PERMIT ALLOWS

In accordance with the endorsed plans:

- Construction of a 10-storey building for the use of student accommodation, ground floor retail premises and a reduction in the standard car parking requirements for the retail premises in accordance with the endorsed plans.

### CONDITIONS

#### Amended plans required

- 1 Before the development starts, amended plans must be submitted to the satisfaction of the Responsible Authority. When the plans are to the satisfaction of the Responsible Authority they will be endorsed and will then form part of the Permit. The plans must be drawn to scale with dimensions in an unlocked PDF, substantially in accordance with the advertised plans (VCAT Amended Plans, plot date 24/4/2022, Rev 2) prepared by Plus Architecture, but modified to show:

#### *General:*

- (a) Changes to the western edge of the terraces along the walkway in accordance with the plan prepared by Plus Architecture TP100 Revision 3 dated 20 May 2022.
- (b) Correct the North Elevation generally in accordance with the plan prepared by Plus Architecture TP200 Revision 3 dated 20 May 2022 including a pattern to the concrete wall at ground level.
- (c) Provision of additional communal study spaces at levels 3-6.

#### *Materials and Finishes:*

- (d) The Queens Avenue footpath, adjacent to the subject site, to be resurfaced with asphalt and bluestone banding with finished surface levels that generally match the existing conditions;
- (e) The finished surface material for the ground floor front setback to consist of asphalt and bluestone bands with finished floor levels that match the resurfaced adjacent footpath;



- (f) The application of a graffiti-resistant coating to all brick and concrete finishes on the at-grade floors facing Queens Avenue and the VicTrack land;
- (g) Modifications to the schedule of materials and finishes to detail the proposed ground surface materials and levels for the front setback;
- (h) A schedule of materials and finishes, including physical samples of all stone, timber finishes, concretes, brick and metal finishes. The schedule must include details of the size format that the various materials are to be applied and provide further details of the finishes;

#### *Sustainability:*

- (i) Any modifications to the development necessary as a result of recommendations made in the ESD report required by this permit;

#### *Parking and accessways:*

- (j) A notation bicycle signage is to be installed and displayed in accordance with Clause 52.34-5 of the Boroondara Planning Scheme;
- (k) A Bicycle and Car Parking Management Plan in accordance with this permit;
- (l) The redundant vehicle crossover removed and the area reinstated with footpath, kerb and channel;

#### *Acoustic Report*

- (m) Any modifications to the proposed development that are identified in the Acoustic report required by this permit;

### **Layout and uses not to be altered**

- 2 The layout of the site and the size, levels, design and location of buildings and works and the description of the uses shown on the endorsed plans must not be modified for any reason (unless the Boroondara Planning Scheme specifies that a permit is not required) without the prior written consent of the Responsible Authority.

### **Student Management Plan**

- 3 Before the occupation of the building, a Student Management Plan for the site must be submitted to and approved by the Responsible Authority. The plan must not be modified without the written consent of the Responsible Authority. The Plan must cover the following points but may include other points:
  - (a) A standard lease for the student lodging rooms;
  - (b) The nature of the management of the complex and contact details of the site manager/management company;
  - (c) The means by which bicycle parking will be allocated and a register that documents allocation of these spaces;

- (d) Rules regarding occupancy and grievance procedures;
- (e) Emergency and evacuation procedures;
- (f) Maintenance and cleaning schedules;
- (g) Details of management procedures over holiday periods;
- (h) Details of rubbish bin storage and collection;
- (i) Any provision for short stays by parents or visitors, subject to the availability of beds.
- (j) Details of supervision and/or security of the site.

When approved, the Plan will be endorsed and will then form part of the permit. The use must be accordance with the approved Student Management Plan, to the satisfaction of the Responsible Authority.

## **Bicycle and Car Parking Management Plan**

- 4 Concurrent with the submission of amended plans required by Condition 1 of this Permit, a Bicycle and Car Parking Management Plan must be submitted to and approved by the Responsible Authority.

The Plan must detail how the on-site bicycle and car parking spaces approved under this permit will be allocated and managed, and outline fees or charges associated with the use of the bicycle and car parking spaces and electric charging facilities which must not deter usage of the designated spaces by residents of the accommodation.

When approved, the Plan will be endorsed and will then form part of the permit. Management of the parking provided in association with the use must be in accordance with the approved Plan, to the satisfaction of the Responsible Authority.

## **Subdivision of student accommodation**

- 5 Any future subdivision of the student accommodation facility must show all communal facilities, including bicycle parking, student lounges, ground floor entry, study areas and laundry, as common property to be managed for the benefit of the student residents.

## **Facilities for residents only**

- 6 Any recreational facilities on the premises must only be accessible to persons who are residents or guests of the residents. It is the responsibility of the management to ensure access is restricted to persons registered to stay on the premises who hold a security pass or key to a room on the relevant date and their guests to the satisfaction of the responsible authority.

## **Acoustic report**

- 7 Prior to the endorsement of plans pursuant to condition 1 of this permit, an acoustic report prepared by a suitably qualified person must be prepared to the satisfaction of, and submitted to, the responsible authority for approval

# VCAT Directed Plans

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Once approved, the acoustic report will be endorsed and will then form part of the permit. The acoustic report must include recommendations as to how the dwellings in the development will achieve compliance with the internal noise levels contained in Standard D16 of Clause 58. Any modifications to the proposed development that are identified in that report as being necessary to achieve compliance with D16 must be shown in the plans required by condition 1 of this permit.

## Landscape Plan

- 8 Concurrent with the endorsement of the plans referred to in Condition 1 of this permit, a Landscape Plan to the satisfaction of the responsible authority must be submitted to and approved by the Responsible Authority. The plan must be drawn to scale with dimensions and three (3) copies provided. When endorsed, the plan will form part of the permit. The plan must be generally in accordance with the Landscape concept plan prepare by John Patrick Landscape Architects, revision A for VCAT circulated on 26 April 2022, but modified to show:
- (a) Changes in accordance with the development plans.
  - (b) Provision of hanging plants at ground level within the planters along the northern elevation that will hang down over the wall.

## Completion of landscaping works

- 9 Landscaping as shown on the endorsed landscape plans must be carried out and completed to the satisfaction of the Responsible Authority prior to the occupation of the development.

## Landscaping maintenance

- 10 All landscaping works shown on the endorsed landscape plan/s must be maintained and any dead, diseased or damaged plants replaced, all to the satisfaction of the Responsible Authority.

## Maintenance of Buildings and Works

- 11 All buildings and works must be maintained in good order and appearance to the satisfaction of the Responsible Authority.

## Drainage

- 12 The land must be drained to the satisfaction of the Responsible Authority.

## Confirmation of architect team

- 13 Before the development starts, the Responsible Authority must be provided with evidence to its satisfaction that Plus Architecture, or an alternative architectural firm to the satisfaction of the Responsible Authority, has been engaged as part of the ongoing consultant team to oversee the design and construction to ensure that the design quality and appearance of the approved development is realised.



## Management Plan

- 14 Prior to the occupation of the development, a management plan for the public pedestrian link must be prepared to the satisfaction of, and submitted to, the Responsible Authority for approval. Once approved, the management plan will be endorsed and will then form part of the permit. The management plan must include details of the times during which the link will be open to the public, and any other conditions with respect to its use. The management plan must be complied with at all times unless with the written consent of the responsible authority.

## Conditions relating to railway land

- 15 Unless otherwise agreed in writing with Public Transport Victoria and VicTrack, windows and doors must not be placed on the title boundary with the Railway Land and no windows or doors are permitted to open beyond the Railway Land title boundary to the satisfaction of Public Transport Victoria and VicTrack.
- 16 Prior to the commencement of works, detailed construction/ engineering plans and computations for any construction or works likely to have an impact on railway operations or railway infrastructure assets are to be submitted to and approved by VicTrack and the Rail Operator. The plans must detail all excavation of the site adjacent to the railway corridor, having any impact on the rail reserve, and ensure compliance regarding building clearances to aerial power lines as per the applicable Victorian Electrical Safety Regulations.
- 17 Unless otherwise agreed in writing with VicTrack permanent or temporary soil anchors must not be installed on railway land.
- 18 Prior to commencement of works, the Rail Operator must be contacted through the email address [metrositeaccess@metrotrains.com.au](mailto:metrositeaccess@metrotrains.com.au) to obtain the Rail Operator's conditions and safety requirements for works on, over or adjacent to railway land.
- 19 Any damage to the Rail Operator's infrastructure as a consequence of the construction works must be rectified to the satisfaction of the Rail Operator at full cost of the Permit holder.
- 20 The Planning Permit holder must take all reasonable steps to ensure that disruptions to train operation within the railway corridor are kept to a minimum during the construction of the development and are in compliance with the Rail Operators Safety and Environmental requirements within the Rail Operators construction control and indemnity agreement.
- 21 Building materials (including glass/window/ balcony treatments) likely to have an effect on train driver operations along the rail corridor must be non-reflective and avoid using red or green colour schemes.

- 22 No lighting is to be erected that throws light onto the railway tracks or which interferes with the visibility of signals and the rail lines by train drivers.
- 23 No drainage, effluent, waste, soil or other materials must enter or be directed to railway land or stored or deposited on railway land.
- 24 Entry onto railway land is at the discretion of the Rail Operator and is subject to the Rail Operator's Site Access Procedures and conditions.
- 25 The developer shall pay any Rail Operator costs required for the development documentation review or construction works due to the Permit as required by the Rail Operator.
- 26 Access to VicTrack land during construction and for maintenance purposes after completion will require permission from Metro Trains Melbourne and will be subject to both organisation's site access procedures and conditions.

## **External lighting (outdoor communal and publicly accessible areas)**

- 27 Concurrent with the endorsement of the plans referred to in Condition 1 of this permit, a detailed External Lighting Plan must be prepared to the satisfaction of the Responsible Authority. Once satisfactory, such plan will be endorsed and must be implemented to the satisfaction of the Responsible Authority. The plan must provide the following details to the satisfaction of the Responsible Authority:
  - (a) Lighting within the outdoor publicly accessible areas of the site;
  - (b) Lighting within the outdoor communal areas.

When endorsed, the plan will form part of the permit.

- 28 All outdoor lighting of publicly accessible areas must be designed, baffled and located to prevent light from the site causing any detriment to the locality, to the satisfaction of the Responsible Authority.

## **Waste Management Plan**

- 29 Concurrent with the submission of amended plans required by Condition 1 of this Permit, a Waste Management Plan must be prepared to the satisfaction of the Responsible Authority. Once satisfactory, such plan will be endorsed and must be implemented to the satisfaction of the Responsible Authority. The plan must be generally in accordance with the Waste Management Plan to include:
  - (a) Regular private food and garden organics (FOGO) collection; and
  - (b) Waste collection to occur outside AM and PM commuter peak times and in accordance with any other condition in this permit;
  - (c) Sufficient space for communal hard waste storage so as to not have to rely on hard waste being stored within individual rooms or amenity areas between collections;

- (d) Scheduled collection of hard waste at the end of each semester to the satisfaction of the Responsible Authority.

## Maintenance of waste storage area

- 30 All bins and receptacles used for the collection and storage of solid waste, recyclables and other wastes must be kept in a designated area, to the satisfaction of the Responsible Authority. This storage area must be:
- (a) Properly paved and drained to a legal point of discharge;
  - (b) Screened from view with a suitably designed enclosure;
  - (c) Supplied with adequate hot and cold water; and
  - (d) Maintained in a clean and tidy condition free from offensive odours to the satisfaction of the Responsible Authority.

## Hours for waste collection

- 31 Collection of waste must be conducted so as not to cause any unreasonable disturbance to nearby residential properties and may only take place during the following times:

Monday to Friday: 7:00am to 6:00pm

Saturday & Public Holidays: 9:00am to 6:00pm

Sunday: No collection allowed

to the satisfaction of the Responsible Authority.

## Regular waste removal

- 32 All waste material not required for further on-site processing must be regularly removed from the site. All vehicles removing waste must have fully secured and contained loads so that no wastes are spilled or dust or odour is created, to the satisfaction of the Responsible Authority.

## Land Suitable for a Sensitive Use

- 33 Prior to the commencement of construction of the building hereby approved:
- (a) A preliminary risk screen assessment statement in accordance with the *Environment Protection Act 2017* must be issued stating that an environmental audit is not required for the use or the proposed use; or
  - (b) An environmental audit statement under Part 8.3 of the *Environment Protection Act 2017* must be issued stating that the land is suitable for the use or proposed use.
- 34 Notwithstanding the provisions of Condition 33, the following works can be carried out before any necessary environmental audit statement or a is provided to the Responsible Authority:

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- (a) Buildings and works that necessarily form part of the Environmental Audit process; and
  - (b) Buildings and works that the Environmental Auditor engaged by the owners advises must be carried out before an environmental audit statement can be issued.
- 35 Buildings and works under Condition 34 carried out before any necessary environmental audit statement is provided to the Responsible Authority must be carried out in accordance with the Works Plan approved by the Environmental Auditor engaged by the owner. A copy of the Works Plan must be provided to the Responsible Authority before the commencement of the buildings and works for the purposes of this condition.
- 36 Before the construction of the building hereby approved commences (excluding buildings and works carried out in accordance with a Works Plan approved by the Environmental Auditor engaged by the owner), a copy of any necessary environmental audit statement, and the complete audit report and audit area plan must be submitted to the Responsible Authority.
- 37 The development and use allowed by this permit must comply with the directions and conditions of any environmental audit statement issued for the land.
- 38 Prior to the occupation of the residential building (student accommodation), a letter must be submitted to the Responsible Authority by an Environmental Auditor accredited with the EPA, to advise that all construction and remediation works necessary and required by an environmental audit statement have been carried out.
- 39 Any handling and disposal of contaminated site soil must be in accordance with the requirements of any environmental audit statement issued for the land, the requirements of the Environment Protection Authority and the *Environment Protection Act 2017*.

## Underground infrastructure connections

- 40 Underground infrastructure connections, including electricity, must be available to each premises shown on the endorsed plans before any premises can be occupied, to the satisfaction of the Responsible Authority.

## Use of car parking spaces and driveways

- 41 Car spaces, access lanes and driveways shown on the endorsed plan must not be used for any other purpose and may be used by occupants of or visitors to the site and the general public to the satisfaction of the Responsible Authority.
- 42 All vehicles entering and exiting the car park must do so in a forwards direction.



## Car park control equipment

- 43 Before the use starts or any building is occupied, details of any car park control equipment (controlling access to and egress from the internal car parks) must be submitted to and approved in writing by the Responsible Authority. These details must include a car park control device which can be accessed by visitors to the development including clear instructions on how to operate any security system, to the satisfaction of the Responsible Authority.

## Number and allocation of car parking spaces

- 44 A minimum of 12 car parking spaces associated with the student housing use must be provided on the land, unless varied with the written consent of the Responsible Authority.

## Vehicle crossovers

- 45 Any new vehicle crossover or modification to an existing vehicle crossover must be constructed to the satisfaction of the Responsible Authority.

## Removal of redundant vehicle crossovers

- 46 All disused or redundant vehicle crossovers must be removed and the area reinstated with footpath, kerb and channel to the satisfaction of the Responsible Authority.

## Concealment of Pipes

- 47 All pipes (except down-pipes), fixtures, fittings and vents servicing any building on the site must be concealed in service ducts or otherwise hidden from external view to the satisfaction of the Responsible Authority.

## Plant/equipment or features on roof

- 48 No plant, equipment, services or architectural features other than those shown on the endorsed plans are permitted above the roof level of the buildings without the prior written consent of the Responsible Authority.

## Boundary walls

- 49 The external faces of walls on or facing boundaries are to be cleaned and finished to the same standard as such walls within the development site to the satisfaction of the Responsible Authority.

## Environmentally Sustainable Design Report

- 50 Concurrent with the submission of amended plans required by Condition 1 of this Permit, an Environmentally Sustainable Design (ESD) Report that is to the satisfaction of the Responsible Authority must be prepared by a suitably qualified expert and submitted to the Responsible Authority for approval. The Report must address ESD principles proposed for the site, including, but not limited to:
- (a) Energy efficiency;

# VCAT Directed Plans

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- (b) The use of double glazing (or better) with commercial-grade seals for all exterior glazing;
- (c) Stormwater collection (for re-use in landscape irrigation and toilet flushing, with mains back-up). The capacity of the tank and the catchment area must be sufficient to achieve a Melbourne Water STORM rating of not less than 100%;
- (d) A maintenance regime for the infrastructure, plant and equipment associated with stormwater collection and re-use, including, but not limited to:
  - i Gutters inspection and clearing;
  - ii Roof (condition and clearance of debris);
  - iii Checks of tank inlets, insect-proofing, first flush diversion and filter clean/repair;
  - iv Tank and tank roof checks (structural integrity check, access cover check, hole repairs);
  - v Internal inspection (infestation by animals/insect larvae, algal growth);
  - vi Downpipes and rainwater reticulation integrity checks;
  - vii Pump checks (noise and proper and reliable operation);
  - viii Tank draining for internal inspection and checks for deterioration;
  - ix Sediment level check and removal;
  - x Pressure tests and rectification of deterioration;
  - xi Reviews of management procedures and implementation of preventative actions.
  - xii The frequency with which these checks are to take place
  - xiii Details of who is to be responsible for ensuring the WSUD system continues to operate in good order;
- (e) Communal charging facilities for electric scooters/motorcycles;
- (f) Waste disposal, including regular food and garden organics (FOGO) collection and building materials;

Any recommended changes to the building must be incorporated into the plans required by Condition 1. Once approved, such a plan must be implemented prior to the occupation of the dwellings to the satisfaction of the Responsible Authority.



## Construction Management Plan

- 51 Prior to the commencement of any site works, including demolition and excavation, a Construction Management Plan must be submitted to and endorsed by the Responsible Authority. No works are permitted to occur until the Plan has been endorsed by the Responsible Authority. Once endorsed, the construction management plan will form part of the permit and must be implemented to the satisfaction of the Responsible Authority. The plan must be prepared in accordance with Council's Construction Management Plan Template and provide details of the following:
- (a) Hours for construction activity in accordance with any other condition of this permit;
  - (b) Measures to control noise, dust, water and sediment laden runoff;
  - (c) Measures relating to removal of hazardous or dangerous material from the site, where applicable;
  - (d) A plan showing the location of parking areas for construction and sub-contractors' vehicles on and surrounding the site, to ensure that vehicles associated with construction activity cause minimum disruption to surrounding premises. Any basement car park on the land must be made available for use by sub-constructors/tradespersons upon completion of such areas, without delay;
  - (e) A Traffic Management Plan showing truck routes to and from the site;
  - (f) Swept path analysis demonstrating the ability for trucks to enter and exit the site in a safe manner for the largest anticipated truck associated with the construction;
  - (g) A plan showing the location and design of a vehicle wash-down bay for construction vehicles on the site;
  - (h) Measures to ensure that sub-contractors/tradespersons operating on the site are aware of the contents of the Construction Management Plan;
  - (i) Contact details of key construction site staff;
  - (j) A site plan showing the location of any site sheds, on-site amenities, building waste storage and the like, noting that Council does not support the siting of site sheds within Council road reserves; and
  - (k) Any other relevant matters.

## Hours for Demolition and Construction Work

- 52 All works including earthworks, demolition and construction activity associated with the approved development must take place only during the following hours, except with the prior written consent of the Responsible Authority:

Monday to Thursday: 7:00am to 6:00pm

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Friday: 7:00am to 5:00pm

Saturday: 9:00am to 5:00pm

Sunday & Public Holidays: No construction

## Amenity of area

53 The amenity of the area must not be adversely affected by the use and development as a result of the:

- (a) Transport of materials, goods or commodities to or from the land; and/or
- (b) Appearance of any building, works, stored goods or materials; and/or
- (c) Emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, ash, dust, waste water, waste products, grit or oil; and/or
- (d) The presence of vermin.

## Permit to Expire

54 This Permit will expire if:

- (a) The development does not start within two (2) years of the issue date of this Permit;
- (b) The development is not completed within four (4) years of the issue date of this Permit.
- (c) The use of the land for student accommodations is not commenced within two (2) years of the completion of the development.

In accordance with Section 69 of the *Planning and Environment Act 1987*, a request may be submitted to the Responsible Authority within the prescribed timeframes for an extension of the periods referred to in this condition.

– End of conditions –



# VCAT Directed Plans

## GROUND OF APPLICATION TO AMEND

PLANNING PERMIT NO. PP21/0610

21-27 QUEENS AVENUE, HAWTHORN VIC 3122

These plans/documents are available for viewing in accordance with the direction of the Victorian Civil and Administrative Tribunal in the matter of VCAT Ref P830/2022.

1. Nan Xin Hawthorn Pty Ltd, is the Permit Holder and registered proprietor ("Applicant"), in relation to Planning Permit No. Planning Permit PP21/0610 (**Attachment 1.1**) ("the Planning Permit") in respect of the land at 21-27 Queens Avenue, Hawthorn VIC 3122 ("the subject land").
2. The Planning Permit was issued on 25 July 2022 and allows:  
  
*"Construction of a 10-storey building for the use of student accommodation, ground floor retail premises and a reduction in the standard car parking requirements for the retail premises in accordance with the endorsed plans."*
3. The Planning Permit was issued at the direction of the Tribunal in *Nan Xin Hawthorn Pty Ltd v Boroondara CC* [2022] VCAT 748 ("VCAT Decision") (**Attachment 4.1**)
4. The only statutory referral for the planning permit application no. PP21/0610 that was the subject of the Planning Permit was Head, Transport of Victoria (Head, ToV) given it involved an application to construct a building for a residential building comprising 60 or more lodging rooms. No objection or response was received by Boroondara City Council from Head, ToV.
5. VicTrack by letter dated 1 November 2021 (**Attachment 5.2**) lodged an objection to the permit application following notice by Council under section 52 of the *Planning and Environment Act*. That objection raised concerns in relation to:
  - Unacceptable detrimental impacts on the functioning of the State Digital Radio Signalling system (DTRS); and
  - The reliance on pedestrian access to VicTrack land located within the Metro Infrastructure Lease rail corridor.

The letter goes on to state:

*"If in the event that these issues could be resolved, Victrack would seek to recommend standard conditions to Council prior to the issue of any permit to protect the rail corridor."*

No such conditions were recommended by VicTrack to Council.

6. In the VCAT decision, VicTrack did not lodge any statement of grounds or seek to participate in the proceedings. Notwithstanding, the Tribunal in that decision considered the matters raised in the VicTrack objection and made extensive findings in relation to potential impacts on rail infrastructure, including the existing DTRS tower and the pedestrian link: see paragraphs [11], [45]-[50]. In relation to the DTRS tower the Tribunal held at [48]-[49]:

*The second concern raised by VicTrack was the proximity of the review site to its communications tower (DTRS tower) which is located about 16m from the north west corner of the review site. ... VicTrack objected to the application on the basis that it*

These plans/documents are available for viewing in accordance with the direction of the Victorian Civil and Administrative Tribunal in the matter of VCAT:Ref.P830/2023."

*will have unacceptable detrimental impacts on the functioning of the State Digital*

*Train Radio Signalling system (DTRS) that will affect safety. VicTrack noted that:*

*There are currently difficulties in this system between Auburn and Camberwell due to the level of development which has interrupted the radio system's line of sight. The height of this equipment is 25m. The proposed building's height is significantly taller than our equipment.*

*We are conscious of the policy framework that seeks to protect and enhance the public transport network. However, neither VicTrack nor the Head, Transport for Victoria sought to become a party to this proceeding nor provided further information in a statement of grounds. Given the fact that the existing planning permit for the review site has a very similar footprint and profile to the proposal before us, it would appear that both buildings will impact on the rail signal tower. It is likely that continuing development within this precinct will require reconsideration of the location of this infrastructure.*

\*Emphasis added

7. The Tribunal did not require any change to the development in condition 1 of the Permit to require any change to the height or extent of the building envelope having regard to the potential impact on the DTRS tower, nor did it include any conditions in the Permit to require this.
8. As to the issue of conditions, at paragraph 50 of the VCAT decision the Tribunal commented:

*VicTrack indicated that 'if these issues could be resolved, Victrack would seek to recommend standard conditions to Council prior to the issue of any permit to protect the rail corridor'. The conditions relating to the railway land were transposed by Council from the previous planning approval and we find these appropriate.*

\*Emphasis added

9. The origins of conditions 16, 18 and 25 on the Planning Permit appear to derive not from any statutory referral in the permit application, nor VicTrack conditions but rather conditions Council proposed from the an earlier Planning Permit No. PP16/00827 issued on 15 May 2018 following an earlier VCAT decision in *Queens Avenue Developments Pty Ltd v Boroondara CC* [2018] VCAT 629 ("2018 VCAT decision") (**Attachment 5.4**) where the Tribunal directed the grant of a permit for the use and development of a 10 storey building comprising not more than 66 dwellings, ground floor office space plus three basement levels on the Site. VicTrack did not object to the 2018 permit application the subject of the 2018 VCAT Decision and nor was it a party to that proceeding. Public Transport Victoria in its referral response dated 9 August 2017 did not object to the application subject to conditions (**Attachment 5.5**). Conditions 15 to 26 in the Planning Permit appear to derive from the 2017 PTV referral comments from the 2018 permit application.

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10. There has been a longstanding dispute with the Applicant and VicTrack in relation to the ambit of condition 16 and whether impacts of the development on the DFRS tower can be considered. The Applicant maintains that it is beyond the scope of the approval of engineering plans under condition 16 to consider the impact of the DFRS tower, which has already been considered and determined by the Tribunal in the VCAT decision dated 7 July 2022.

11. A s149 appeal against the refusal/failure of VicTrack to approve plans pursuant to condition 16 is the subject of VCAT proceeding No. P1758/2022. In relation to preliminary questions before the Tribunal, in its order dated 8 June 2023 (**Attachment 5.6**), the Tribunal at paragraphs 27 to 29 of the Tribunal decision the Tribunal commented:

- 27 There is certainly nothing in condition 16 that could be taken to mean that the approval of plans and computations by VicTrack would release the applicant or the development from complying with the requirements of other laws. This includes the *Building Act 1993* (Vic) and the Building Regulations 2018 which deal with protection works for adjoining property.<sup>8</sup> There may also be other transport laws concerned with protecting 'railway operations or railway infrastructure assets'.
- 28 To the extent this is of central concern to VicTrack as the adjoining landowner, I question whether these are matters that would be more appropriately addressed outside of the planning process, notwithstanding the inclusion of this (albeit unusual) condition in the permit.
- 29 The approval of plans and computations under condition 16 is certainly not an opportunity to reassess the merits of the approved development. However it is to be acknowledged that the identification of impacts may result in protection works being required under the *Building Act 1993* and hypothetically this may necessitate changes to the approved development down the track.

12. At paragraph 32 of the VCAT decision identified other remedies for the Applicant commenting: "Alternatively it could also seek to amend the permit to delete condition 16".

## **APPLICATION TO AMEND THE PLANNING PERMIT**

13. The Applicant contends that conditions 16, 18 and 25 should be deleted from the Planning Permit and relies upon the following grounds and reserves the right to amend these grounds upon receipt of any statement of grounds.

No.	Condition Requirement	Grounds for Appeal
16	<i>Prior to the commencement of works, detailed construction/ engineering plans and computations for any construction or works likely to have an impact on railway operations or railway infrastructure assets are to be submitted to and approved by VicTrack and the Rail Operator. The plans must detail all excavation of the site adjacent to the railway corridor, having any impact on the rail reserve, and ensure</i>	Condition 16 ought to be deleted on the basis that: <ul style="list-style-type: none"> <li>(a) Vic Track is not a statutory referral authority, is not the rail operator, and does not have the management and control of the rail infrastructure;</li> <li>(b) It is inappropriate to include permit conditions requiring approval of plans by non statutory referral authorities under the Planning Scheme;</li> </ul>

# VCAT Directed Plans

No.	Condition Requirement	Grounds for Appeal
	<p>compliance regarding building clearances to aerial power lines as per the applicable Victorian Electrical Safety Regulations.</p>	<p>(c) These conditions were not conditions recommended by VicTrack or any statutory referral authority to the permit application that was the subject of the Planning Permit;</p> <p>(d) In respect of Metro Train, the rail operator, it is neither a statutory referral authority or a public authority and it is inappropriate for conditions requiring approval of plans by them to be included in the permit;</p> <p>(e) If protection works are required to protect rail infrastructure these matters are and should be appropriately addressed pursuant to protection works under the <i>Building Act</i>. It is not appropriate for the planning permit system to deal with these issues especially given there is different legislative regime to deal with these matters.</p>
18	<p><i>Prior to commencement of works, the Rail Operator must be contacted through the email Address metrositeaccess@metrotrains.com.au to obtain the Rail Operator's conditions and safety requirements for works on, over or adjacent to railway land.</i></p>	<p>This condition should be deleted and the Applicant relies upon the same grounds above in relation to condition 16. Further this condition is vague, uncertain, inappropriately imposes authority on a non public authority and further is unnecessary given it imposes no obligation to comply with any rail operator conditions or safety requirements even if they were appropriate.</p>
25	<p><i>The developer shall pay any Rail Operator costs required for the development documentation review or construction works due to the Permit as required by the Rail Operator.</i></p>	<p>This condition is redundant if condition 16 is deleted as there is no development documentation that would be required to be approved under the Planning Permit by the rail operator.</p>

These plans/documents are available for viewing in accordance with the direction of the Victorian Civil and Administrative Tribunal in the matter of VCAT Ref.P830/2023.

# VCAT Directed Plans

These plans/documents are available for viewing in accordance with the direction of the Victorian Civil and Administrative Tribunal in the matter of VCAT:Ref.P830/2023 ."

Our Ref: CSM62782

1 November 2021

Ms Kelly Caporaso  
Statutory Planning Department  
Boroondara City Council  
Private bag 1  
CAMBERWELL VIC 3124  
Emailed to: boroondara@boroondara.vic.gov.au

Dear Ms Caporaso

**Planning Permit Application No: P21/0610**  
**21-23 Queens Avenue, Hawthorn**

We refer to Council's correspondence notifying VicTrack under section 52 of the Planning and Environment Act 1987 of a planning application for land at the above address.

The application seeks approval for use and development of a 10 storey student accommodation building comprising not more than 66 dwellings, ground floor office space and 3 basement levels, and a reduction of the visitor parking requirement.

VicTrack is owner of the majority of Victoria's railway land and infrastructure, including the land abutting the application site. The rail corridor is located on the application site's northern boundary. This land is leased to Metro Trains Melbourne (MTM) rail operator. The common boundary is the following approximate distances from the nearest railway assets:

- DTRS Tower 16m
- Rail track 16.5m
- Underground fibre optic cable 2m
- Embankment 5-15m

Pursuant to the *Transport Integration Act 2010*, VicTrack manages rail land, infrastructure and assets on behalf of the State. As such, our interest in this application relates to the proposed interface arrangement with railway land and to ensure that during construction and on an ongoing basis that rail infrastructure and services are protected to minimise damage and delays.

---

**VicTrack**

Level 8, 1010 La Trobe St Docklands VIC 3008  
GPO Box 1681 Melbourne VIC 3001  
T 1300 VICTRACK (1300 842 872)  
[victrack.com.au](http://victrack.com.au)

**VicTrack**

# VCAT Directed Plans

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VicTrack has reviewed the plans and supporting documents in the context of the site and abutting railway land. VicTrack has identified two important issues that we request Council address in its decision making:

**VicTrack objects to the application on the basis that it will have unacceptable detrimental impacts on the functioning of the State Digital Train Radio Signalling system (DTRS) that will affect safety.**

The DTRS pole is located approximately 16m directly to the west of the subject site at 21-23 Queens Avenue, Hawthorn. The DTRS pole is indicated by the green triangle in **Figure 1**. This telecommunications pole services critical telecommunications equipment that provides digital radio service along the rail corridor in both directions, up and down track and to the control centre. This allows trains to communicate to one another and to the control centre. There are currently difficulties in this system between Auburn and Camberwell due to the level of development which has interrupted the radio system's line of sight. The height of this equipment is 25m. The proposed building's height is significantly taller than our equipment.

We consider that if this building is built as designed, it will significantly impact the safe rail operations along the section of track between Auburn and Camberwell Train Stations. MTM is currently looking at investing \$200-\$300 thousand dollars on a 'repeater' to ameliorate this problem which has been worsened by high scale development in the area, particularly at 31 Queens Avenue. The development if built, would cancel out any benefit from the repeater solution.

Aside from the severe impact on the Transport system, if the development is built, the radio signals will be directed into the development causing interference to domestic electrical equipment and potential health impacts from the electromagnetic waves.

The DTRS tower is critical infrastructure that is crucial to safe rail operations. If this system is not able to function properly it threatens safety and could result in train drivers not being able to communicate in sufficient time if there is an accident or an obstruction or a person on the tracks.



**Figure 1**

# VCAT Directed Plans

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**VicTrack objects to the application on the basis that it relies on direct pedestrian access to VicTrack land located within the Metro Infrastructure Lease rail corridor. Such access is prohibited and will constrain the use of Transport land.**

As indicated in **Figure 1**, the land directly to the north of the subject site, edged in a dashed purple line, is owned by VicTrack. The majority of this land is leased under the Metro Infrastructure Lease (MIL) to Metro Trains Melbourne (MTM) the rail operator. The green shading generally notes the MIL lease area. This is operational rail land that is controlled by VicTrack and the rail operator, MTM.

**Figure 1** includes an area, adjacent to the northern boundary of 23 Queens Avenue which has been excised from the MIL - it is edged in an orange line and shaded a lighter green. This lot is identified by VicTrack as Auburn Lot 39 and it extends east to Auburn Road and is leased to the City of Boroondara.

The portion of the VicTrack land immediately to the north of 21 Queens Parade, is (unlike Auburn Lot 39) located entirely in the MIL rail corridor. The rear pedestrian access/egress point is proposed on the western edge of 21 Queens Avenue northern boundary and would discharge pedestrians directly into Metro Infrastructure Lease operational rail land. VicTrack objects to this, as it is not public realm land, it is needed for critical infrastructure and is not suitable to be a highly trafficked space.

Access to the rail corridor is restricted and is subject to MTM permission. Approval of a pedestrian access point in this location would entrench a use that would constrain transport land and how it can be used in this location. This is contrary to the VicTrack Development Interface Guidelines which can be accessed on the VicTrack website under the “I want to – build next to the rail corridor” tab:

<https://www.victrack.com.au/i-want-to/build-next-to-the-rail-corridor>

The rail land in question directly to the north of 21 and 23 Queens Avenue is not able to be sold as it is required for Transport purposes. VicTrack must retain ownership of land that is within 6 metres from the top and the toe of a rail embankment. The land in this location is important for provision of critical telecommunications and transport infrastructure and must be retained by VicTrack.

I also wish to highlight that the fluoro green line highlighted in **Figure 1** denotes VicTrack underground Communications Infrastructure. Any development near this infrastructure would be subject to the Permit to Work process.

The Department of Transport and MTM rail operators have been consulted in the preparation of this response and VicTrack understands they will also respond separately.

Given the importance of these issues to VicTrack, DoT and MTM, VicTrack would welcome meeting with the Council and Applicant (and potentially jointly with DoT and MTM) to further explain the DTRS signalling issue and potentially explore ways these issues could be resolved.



## VCAT Directed Plans

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If in the event that these issues could be resolved, Victrack would seek to recommend standard conditions to Council prior to the issue of any permit to protect the rail corridor.

Should you have any queries, please contact me on 0466 859 271 or [kate.kraft@victrack.com.au](mailto:kate.kraft@victrack.com.au).

Yours sincerely

**KATE KRAFT**

Planning Manager

Cc: Department of Transport

# VCAT Directed Plans

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BOROONDARA

City of Harmony

15 May 2018

Queens Avenue Development Pty Ltd  
C/- SJB Planning P/L  
Kate Foldi  
L 1 80 Dorcas St  
SOUTHBANK VIC 3006

4275  
KF

Dear Madam,

**Property Address:** 21 & 23-27 Queens Avenue, Hawthorn  
**Planning Permit No.:** PP16/00827 **Our Ref:** PA17/00111  
**Proposal:** Use and development of a ten (10) storey building comprising not more than 66 dwellings, ground floor office space plus three basement levels; and to reduce the residential visitor parking requirement.

**Appeal No.:** P2399/2017

Following the appeal relating to the above application, the Victorian Civil and Administrative Tribunal has directed Council to issue a Planning Permit subject to conditions. Your Planning Permit is enclosed.

Your attention is drawn to the following conditions which require amended plans to be submitted to Council for approval:

Condition No.:	Requirement:
1.	Plans for Endorsement
3.	Acoustic report
4.	Landscape Plan
10.	Management Plan
25.	Waste Management Plan
52.	Construction Management Plan

This Permit shall have no force or effect until the relevant plans described above are approved by Council.

Further, this approval does not constitute a Building Permit and if the proposal involves the construction or alteration of a building, you should speak to a qualified Building Surveyor to determine if a separate permit is necessary. Council's Building Services Unit is located on the First Floor, Camberwell Office (telephone 9278 4999), and is available for Building Permits both within and outside the City of Boroondara.

Please be advised that in accordance with Condition 52, **prior to the commencement of any site works (including excavation)**, a Construction Management Plan must be submitted to and endorsed by the Responsible Authority.

The Council's Construction Management Guidelines and Template are available on Council's website via the following weblink:

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# VCAT Directed Plans

These plans/documents are available for viewing in accordance with the direction of the Victorian Civil and Administrative Tribunal in the matter of

<https://www.boroondara.vic.gov.au/planning-by-law/planning-conditions-and-policies/construction-management-guidelines-and-template>

The Tree Protection Local Law 2016 (the Local Law) applies in the City of Boroondara. The Local Law requires that a permit be sought from Council for the removal and/or pruning of a significant tree and/or the carrying out of works (including excavation and construction) within the tree protection zone of a significant tree. A list of Significant Trees is available at <https://www.boroondara.vic.gov.au/waste-environment/trees-and-naturestrips/find-out-if-tree-protected>. In addition, a permit is required to remove a canopy tree. A canopy tree is defined as a tree with a combined trunk circumference of 110 cm or more measured at 1.5 metres above ground level or with a trunk circumference of 150 cm at ground level. A permit is also required to carry out works (including excavation and construction) within 2 metres of a canopy tree. You should be aware that works occurring more than 2 metres away from a canopy tree may still constitute damage or destruction of the tree and may require a permit. A copy of the Local Law may be viewed on Council's website. Further information can be found at <https://www.boroondara.vic.gov.au/sites/default/files/2017-05/Tree-Protection-Local-Law.pdf>.

A Planning Permit does not constitute a permit under the Local Law. The issue of a Planning Permit by Council or by the Victorian Civil and Administrative Tribunal (VCAT) has no bearing on any decision made under the Local Law. Therefore, please note that if a permit is refused under the Local Law, you may not be able to act on the Planning Permit.

Similarly, if the proposal involves the preparation of food in a commercial capacity, the approval of Council's Health Department may be necessary.

Please note that Council can amend VCAT issued Planning Permits pursuant to Section 72(2)(a) of the Planning and Environment Act 1987, that do not contain a condition which states that Council must not amend that Permit, or part of that Permit (as the case requires). In this instance an Applicant also has the choice of seeking an amendment under Section 87A of the Planning and Environment Act to VCAT.

If a condition issued by VCAT restricts Council from considering the amendment, the Permit can only be amended through an application under Section 87 to VCAT (Ph 9628 9777).

Should you have any further questions, please contact Jon Harper on 9278 4824 between 8:30am and 5:00pm Monday to Friday. Alternatively, the Officer may be contacted by email at [jon.harper@boroondara.vic.gov.au](mailto:jon.harper@boroondara.vic.gov.au).

Yours sincerely,



Christopher Mullan

**ACTING PLANNING APPEALS CO-ORDINATOR – STATUTORY PLANNING**

Encl. Permit

## PLANNING PERMIT

Permit Number: PP16/00827  
Planning Scheme: Boroondara Planning Scheme  
Responsible Authority: City of Boroondara

ADDRESS OF THE LAND: 21 & 23-27 Queens Avenue, Hawthorn

### THE PERMIT ALLOWS:

Use and development of a ten (10) storey building comprising not more than 66 dwellings, ground floor office space plus three basement levels; and to reduce the residential visitor parking requirement. In accordance with the endorsed plans:

- The use and development of a ten (10) storey building comprising not more than 66 dwellings, ground floor office space plus three basement levels; and
- To reduce the residential visitor parking requirement.

*This permit was issued by Order of the Victorian Civil and Administrative Tribunal dated 26 April 2018 pursuant to Section 85 (1) (b) of the Planning and Environment Act 1987 – Application For Review No. P2399/2017.*

### THE FOLLOWING CONDITIONS APPLY TO THIS PERMIT:

#### Amended plans required

- 1 Before the development starts, amended plans must be submitted to the satisfaction of the Responsible Authority. When the plans are to the satisfaction of the Responsible Authority they will be endorsed and will then form part of the Permit. The plans must be drawn to scale with dimensions and two (2) copies provided, substantially in accordance with the substituted plans considered in the application – Project No. 216193, drawing nos:

TP00.00-TP00.02, TP01.00 A, TP01.01 B, TP01.02 C- TP01.03C, TP01.04B-TP01.07B, TP01.08-TP01.09, TP02.01B-TP02.05B, TP03.01A, TP03.02B, TP03.03A, TP04.01-TP04.07, TP05.01A, TP05.02-TP05.04, TP05.05A-TP05.06A, TP05.07-TP05.08, TP05.09A, TP05.10-TP05.14, TP05.15A, TP07.01C.

prepared by Rothe Lowman Architects, received by Council on 13 February 2018) but modified to show:

#### General:

- (a) The Queens Avenue footpath, adjacent to the subject site, to be resurfaced with asphalt and bluestone banding with finished surface levels that generally match the existing conditions;

Date Issued: 15 May 2018

Signature for the Responsible Authority: \_\_\_\_\_



Christopher Mullan

**ACTING PLANNING APPEALS CO-ORDINATOR – STATUTORY PLANNING**

Planning Permit No.: PP16/00827

Address of the Land: 21 & 23-27 Queens Avenue, Hawthorn

# VCAT Directed Plans

These plans/documents are available for viewing in accordance with the direction of the Victorian Civil and Administrative Tribunal in the matter of VCAT:Ref.P830/2023."

BOROONDARA  
City of Harmony

- (b) The finished surface material for the ground floor front setback to consist of asphalt and bluestone bands with finished floor levels that match the resurfaced adjacent footpath;
- (c) Coloured elevations that are an accurate representation of the proposed schedule of materials and finishes;
- (d) The application of a graffiti-resistant coating to all brick and concrete finishes on the at-grade floors facing Queens Avenue and the VicTrack land;
- (e) Modifications to the schedule of materials and finishes to detail the proposed ground surface materials and levels for the front setback;
- (f) A schedule of materials and finishes, including physical samples of all stone, timber finishes, concretes, brick and metal finishes. The schedule must include details of the size format that the various materials are to be applied and provide further details of the finishes;
- (g) Any modifications to the development necessary as a result of recommendations made in the ESD report required by this permit;
- (h) Any modifications to the proposed development that are identified in the Acoustic report required by this permit as being necessary to achieve compliance with D16 must be shown in the plans;
- (i) Confirmation on the shower typology used for each shower, in accordance with Standard D17;
- (j) Provision of adequate ventilation to the ground floor lobby, in accordance with Standard D18;
- (k) Details of the location of any air conditioning units to the dwellings. In the event of any air conditioning units being located on the apartment balconies or terraces, the area of private open space must meet the standards of D19;
- (l) Enlarged details, at a scale of 1:20 or 1:50, of the substation doors, fire booster cupboard doors, car park entry, residential entry and public pathway entry and exit, showing the materials, finishes and colours. The selected materials must be durable and of a high quality and integrated with the development;

## Car parking and accessways:

- (m) The provision and allocation of car parking in accordance with Condition 43 in this Permit;
- (n) A schedule of bicycle signage to be displayed in accordance with Clause 52.34-5;
- (o) Provision of 20 bicycle parking spaces for use by residents and visitors within the basement, with a minimum of 20% of the bicycle parking spaces to be floor mounted in accordance with the requirements of AS2890.3-2015; and

Date Issued: 15 May 2018

Signature for the Responsible Authority: \_\_\_\_\_

Christopher Mullan

**ACTING PLANNING APPEALS CO-ORDINATOR – STATUTORY PLANNING**

Planning Permit No.: PP16/00827

Address of the Land: 21 & 23-27 Queens Avenue, Hawthorn

# VCAT Directed Plans

These plans/documents are available for viewing in accordance with the direction of the Victorian Civil and Administrative Tribunal in the matter of VCAT:Ref.P830/2023."

BOROONDARA  
City of Harmony

- (p) Provision of two (2) bicycle parking loops, for use by visitors, on the ground level near the site frontage.

All to the satisfaction of the responsible authority.

## Layout and uses not to be altered

- 2 The layout of the site and the size, levels, design and location of buildings and works and the description of the uses shown on the endorsed plans must not be modified for any reason (unless the Boroondara Planning Scheme specifies that a permit is not required) without the prior written consent of the Responsible Authority.

## Acoustic report

- 3 Prior to the endorsement of plans pursuant to condition 1 of this permit, an acoustic report prepared by a suitably qualified person must be prepared to the satisfaction of, and submitted to, the responsible authority for approval. Once approved, the acoustic report will be endorsed and will then form part of the permit. The acoustic report must include recommendations as to how the dwellings in the development will achieve compliance with the internal noise levels contained in Standard D16 of Clause 58. Any modifications to the proposed development that are identified in that report as being necessary to achieve compliance with D16 must be shown in the plans required by condition 1 of this permit.

## Landscape Plan

- 4 Concurrent with the endorsement of the plans referred to in Condition 1 of this permit, a Landscape Plan to the satisfaction of the responsible authority must be submitted to and approved by the Responsible Authority. The plan must be drawn to scale with dimensions and three (3) copies provided. When endorsed, the plan will form part of the permit.

## Completion of landscaping works

- 5 Landscaping as shown on the endorsed landscape plans must be carried out and completed to the satisfaction of the Responsible Authority prior to the occupation of the development.

## Landscaping maintenance

- 6 All landscaping works shown on the endorsed landscape plan/s must be maintained and any dead, diseased or damaged plants replaced, all to the satisfaction of the Responsible Authority.

## Maintenance of Buildings and Works

- 7 All buildings and works must be maintained in good order and appearance to the satisfaction of the Responsible Authority.

Date Issued: 15 May 2018

Signature for the Responsible Authority: \_\_\_\_\_



Christopher Mullan

**ACTING PLANNING APPEALS CO-ORDINATOR – STATUTORY PLANNING**

Planning Permit No.: PP16/00827

Address of the Land: 21 & 23-27 Queens Avenue, Hawthorn

# VCAT Directed Plans

These plans/documents are available for viewing in accordance with the direction of the Victorian Civil and Administrative Tribunal in the matter of VCAT:Ref.P830/2023."

BOROONDARA  
City of Harmony

## Drainage

- 8 The land must be drained to the satisfaction of the Responsible Authority.

## Confirmation of architect team

- 9 Before the development starts, the Responsible Authority must be provided with evidence to its satisfaction that Rothe Lowman Architects, or an alternative architectural firm to the satisfaction of the Responsible Authority, has been engaged as part of the ongoing consultant team to oversee the design and construction to ensure that the design quality and appearance of the approved development is realised.

## Management Plan

- 10 Prior to the occupation of the development, a management plan for the public pedestrian link must be prepared to the satisfaction of, and submitted to, the Responsible Authority for approval. Once approved, the management plan will be endorsed and will then form part of the permit. The management plan must include details of the times during which the link will be open to the public, and any other conditions with respect to its use. The management plan must be complied with at all times unless with the written consent of the responsible authority.

## Conditions required by Public Transport Victoria

- 11 Unless otherwise agreed in writing with Public Transport Victoria and VicTrack, windows and doors must not be placed on the title boundary with the Railway Land and no windows or doors are permitted to open beyond the Railway Land title boundary to the satisfaction of Public Transport Victoria and VicTrack.
- 12 Prior to the commencement of works, detailed construction/ engineering plans and computations for any construction or works likely to have an impact on railway operations or railway infrastructure assets are to be submitted and approved by VicTrack and the Rail Operator. The plans must detail all excavation of the site adjacent to the railway corridor, having any impact on the rail reserve, and ensure compliance regarding building clearances to aerial power lines as per the applicable Victoria Electrical Safety Regulations.
- 13 Unless otherwise agreed in writing with VicTrack permanent or temporary soil anchors must not be installed on railway land.
- 14 Prior to commencement of works, the Rail Operator must be contacted through the email address [metrositeaccess@metrotrains.com.au](mailto:metrositeaccess@metrotrains.com.au) to obtain the Rail Operator's conditions and safety requirements for works on, over or adjacent to railway land.
- 15 Any damage to the Rail Operator's infrastructure as a consequence of the construction works must be rectified to the satisfaction of the Rail Operator at full cost of the Permit holder.
- 16 The Planning Permit holder must take all reasonable steps to ensure that disruptions to train operation within the railway corridor are kept to a minimum during the construction

Date Issued: 15 May 2018

Signature for the Responsible Authority: \_\_\_\_\_



Christopher Mullan

**ACTING PLANNING APPEALS CO-ORDINATOR – STATUTORY PLANNING**

of the development and in compliance with the Rail Operators Safety and Environmental requirements within the Rail Operators construction control and indemnity agreement.

- 17 Building materials (including glass/window/ balcony treatments) likely to have an effect on train driver operations along the rail corridor must be non-reflective and avoid using red or green colour schemes.
- 18 No lighting is to be erected that throws light onto the railway tracks or which interferes with the visibility of signals and the rail lines by train drivers.
- 19 No drainage, effluent, waste, soil or other materials must enter or be directed to railway land or stored or deposited on railway land.
- 20 Entry onto railway land is at the discretion of the Rail Operator and is subject to the Rail Operator's Site Access Procedures and conditions.
- 21 The developer shall pay any Rail Operator costs required for the development documentation review or construction works due to the Permit as required by the Rail Operator.
- 22 Access to VicTrack land during construction and for maintenance purposes after completion will require permission from Metro Trains Melbourne and will be subject to both organisation's site access procedures and conditions.

### External lighting (outdoor communal and publicly accessible areas)

- 23 Concurrent with the endorsement of the plans referred to in Condition 1 of this permit, a detailed External Lighting Plan must be prepared to the satisfaction of the Responsible Authority. Once satisfactory, such plan will be endorsed and must be implemented to the satisfaction of the Responsible Authority. The plan must provide the following details to the satisfaction of the Responsible Authority:
  - (a) Lighting within the outdoor publicly accessible areas of the site;
  - (b) Lighting within the outdoor communal areas.

When endorsed, the plan will form part of the permit.

- 24 All outdoor lighting of publicly accessible areas must be designed, baffled and located to prevent light from the site causing any detriment to the locality, to the satisfaction of the Responsible Authority.

### Waste Management Plan

- 25 Concurrent with the endorsement of any plans pursuant to Condition 1, a Waste Management Plan, must be prepared to the satisfaction of the Responsible Authority and submitted to the Responsible Authority for approval. Once approved, such Plan must be implemented and complied with at all times to the satisfaction of the Responsible Authority.

Date Issued: 15 May 2018

Signature for the Responsible Authority: \_\_\_\_\_



Christopher Mullan

**ACTING PLANNING APPEALS CO-ORDINATOR – STATUTORY PLANNING**

Planning Permit No.: PP16/00827

Address of the Land: 21 & 23-27 Queens Avenue, Hawthorn

# VCAT Directed Plans

These plans/documents are available for viewing in accordance with the direction of the Victorian Civil and Administrative Tribunal in the matter of VCAT:Ref.P830/2023."

## Maintenance of waste storage area

- 26 All bins and receptacles used for the collection and storage of solid waste, recyclables and other wastes must be kept in a designated area, to the satisfaction of the Responsible Authority. This storage area must be:
- (a) Properly paved and drained to a legal point of discharge;
  - (b) Screened from view with a suitably designed enclosure;
  - (c) Supplied with adequate hot and cold water; and
  - (d) Maintained in a clean and tidy condition free from offensive odours
- to the satisfaction of the Responsible Authority.

## Hours for waste collection

- 27 Collection of waste must be conducted so as not to cause any unreasonable disturbance to nearby residential properties and may only take place during the following times:
- Monday to Friday: 7:00am to 6:00pm
- Saturday & Public Holidays: 9:00am to 6:00pm
- Sunday: No collection allowed
- to the satisfaction of the Responsible Authority.

## Regular waste removal

- 28 All waste material not required for further on-site processing must be regularly removed from the site. All vehicles removing waste must have fully secured and contained loads so that no wastes are spilled or dust or odour is created, to satisfaction of the Responsible Authority.

## Land Suitable for a Sensitive Use

- 29 Prior to the commencement of construction of the building hereby approved:
- (a) A certificate of environmental audit must be issued for the land in accordance with Part IXD of the Environment Protection Act 1970; or
  - (b) An environmental auditor appointed under the Environment Protection Act 1970 must make a statement in accordance with Part IXD of that Act that the environmental conditions of the land are suitable for a sensitive use.
- 30 Notwithstanding the provisions of Condition 28, the following works can be carried out before any necessary Statement of Environmental Audit or a Certificate of Environmental Audit is provided to the Responsible Authority under Condition 28:
- (a) Buildings and works that necessarily form part of the Environmental Audit process; and

Date Issued: 15 May 2018

Signature for the Responsible Authority: \_\_\_\_\_

  
Christopher Mullan

**ACTING PLANNING APPEALS CO-ORDINATOR – STATUTORY PLANNING**

- (b) Buildings and works that the Environmental Auditor engaged by the owners advises must be carried out before a Statement or Certificate of Environmental Audit can be issued.
- 31 Buildings and works carried out before any necessary Statement of Environmental Audit or a Certificate of Environmental Audit is provided to the Responsible Authority must be carried out in accordance with the Works Plan approved by the Environmental Auditor engaged by the owner. A copy of the Works Plan must be provided to the Responsible Authority before the commencement of the buildings and works for the purposes of this condition.
- 32 Before the construction of the building hereby approved commences (excluding buildings and works carried out in accordance with a Works Plan approved by the Environmental Auditor engaged by the owner), a copy of any necessary certificate of environmental audit and/or statement, and the complete audit report and audit area plan must be submitted to the Responsible Authority.
- 33 The development and use allowed by this permit must comply with the directions and conditions of any Statement of Environmental Audit issued for the land.
- 34 Prior to the occupation of the dwellings, a letter must be submitted to the Responsible Authority by an Environmental Auditor accredited with the EPA, to advise that all construction and remediation works necessary and required by an environmental audit or statement have been carried out.
- 35 Any handling and disposal of contaminated site soil must be in accordance with the requirements of any statement of environmental audit issued for the land, the requirements of the Environment Protection Authority and the Environment Protection Act 1970.

## Underground infrastructure connections

- 36 Underground infrastructure connections, including electricity, must be available to each premises shown on the endorsed plans before any premises can be occupied, to the satisfaction of the Responsible Authority.

## Driveways and Car Parking areas to be constructed

- 37 Before the use starts the areas set aside for car parking, access lanes and driveways shown on the endorsed plans must be:
- (a) Constructed;
  - (b) Formed to such levels and properly drained so that they can be used in accordance with the endorsed plans;
  - (c) Surfaced with an all-weather seal coat;
  - (d) Line-marked to indicate each car space and clearly marked to show the direction of traffic along the access lanes and driveways; and

Date Issued: 15 May 2018

Signature for the Responsible Authority: \_\_\_\_\_



Christopher Mullan

**ACTING PLANNING APPEALS CO-ORDINATOR – STATUTORY PLANNING**

Planning Permit No.: PP16/00827

Address of the Land: 21 & 23-27 Queens Avenue, Hawthorn

# VCAT Directed Plans

These plans/documents are available for viewing in accordance with the direction of the Victorian Civil and Administrative Tribunal in the matter of VCAT:Ref.P830/2023."

(e) Drained,

to the satisfaction of the Responsible Authority.

## Model of car stacker in the basement car park

38 Unless otherwise agreed in writing by the Responsible Authority, the model of car stacker used in the basement car park is to be the *WOHR Combilift 543 Car Stacker*.

## Car stackers installed

39 Before the use starts or any building is occupied, car stackers must be installed in accordance with the endorsed plans.

## Maintenance of car stackers

40 The car stackers must be routinely serviced and maintained to the satisfaction of the Responsible Authority to ensure satisfactory access to all car spaces and to prevent any adverse effect on adjoining land by the emission of noise.

## Use of car parking spaces and driveways

41 Car spaces, access lanes and driveways shown on the endorsed plan must not be used for any other purpose and may be used by occupants of or visitors to the site and the general public to the satisfaction of the Responsible Authority.

42 All vehicles entering and exiting the car park must do so in a forwards direction.

## Car park control equipment

43 Before the use starts or any building is occupied, details of any car park control equipment (controlling access to and egress from the internal car parks) must be submitted to and approved in writing by the Responsible Authority. These details must include a car park control device which can be accessed by visitors to the development including clear instructions on how to operate any security system, to the satisfaction of the Responsible Authority.

## Number and allocation of car parking spaces

44 A minimum of 86 car parking spaces must be provided on the land, with car parking spaces allocated in the following manner, unless varied with the written consent of the Responsible Authority:

- (a) Dwelling residents: a minimum of 70 car spaces, including a minimum of:
  - i 1-bedroom dwellings: 1 car space per dwelling
  - ii 2-bedroom dwellings: 1 car space per dwelling
  - iii 3-bedroom and 3+ bedroom dwellings: 2 car spaces per dwelling;
- (b) Office: a minimum of eight (8);
- (c) Dwelling visitors: a minimum of eight (8).

Date Issued: 15 May 2018

Signature for the Responsible Authority: \_\_\_\_\_

Christopher Mullan

**ACTING PLANNING APPEALS CO-ORDINATOR – STATUTORY PLANNING**

## Visitor parking

- 45 Visitor parking spaces within the development must be:
- (a) Clearly identified by appropriate signage having an area no greater than 0.3m<sup>2</sup>;
  - (b) Line marked to indicate each car space; and
  - (c) Available for visitor usage in accordance with the times/days required by this permit.

## Vehicle crossovers

- 46 Any new vehicle crossover or modification to an existing vehicle crossover must be constructed to the satisfaction of the Responsible Authority.

## Removal of redundant vehicle crossovers

- 47 All disused or redundant vehicle crossovers must be removed and the area reinstated with footpath, kerb and channel to the satisfaction of the Responsible Authority.

## Concealment of Pipes

- 48 All pipes (except down-pipes), fixtures, fittings and vents servicing any building on the site must be concealed in service ducts or otherwise hidden from external view to the satisfaction of the Responsible Authority.

## Plant/equipment or features on roof

- 49 No plant, equipment, services or architectural features other than those shown on the endorsed plans are permitted above the roof level of the buildings without the prior written consent of the Responsible Authority.

## Boundary walls

- 50 The external faces of walls on or facing boundaries are to be cleaned and finished to the same standard as such walls within the development site to the satisfaction of the Responsible Authority.

## Environmentally Sustainable Design Report

- 51 Concurrent with the endorsement of any plans pursuant to Condition 1, an Environmentally Sustainable Design (ESD) Report generally in accordance with the reports submitted with the application, must be submitted which is to the satisfaction of the Responsible Authority. The report must be prepared by a suitably qualified expert and submitted to the Responsible Authority for approval. The report must address ESD principles proposed for the site including, but not limited to, energy efficiency, the use of double glazing (or better) with commercial grade seals for the dwellings, waste and building materials. Any recommended changes to the building must be incorporated into the plans required by Condition 1. Once approved, such a plan must be implemented prior to the occupation of the development and maintained to the satisfaction of the Responsible Authority.

Date Issued: 15 May 2018

Signature for the Responsible Authority: \_\_\_\_\_



Christopher Mullan

**ACTING PLANNING APPEALS CO-ORDINATOR – STATUTORY PLANNING**

Planning Permit No.: PP16/00827

Address of the Land: 21 & 23-27 Queens Avenue, Hawthorn

# VCAT Directed Plans

These plans/documents are available for viewing in accordance with the direction of the Victorian Civil and Administrative Tribunal in the matter of VCAT:Ref.P830/2023."

## Construction Management Plan

- 52 Prior to the commencement of any site works, including demolition and excavation, a Construction Management Plan must be submitted to and endorsed by the Responsible Authority. No works are permitted to occur until the Plan has been endorsed by the Responsible Authority. Once endorsed, the construction management plan will form part of the permit and must be implemented to the satisfaction of the Responsible Authority. The plan must be prepared in accordance with Council's Construction Management Plan Template and provide details of the following:
- (a) Hours for construction activity in accordance with any other condition of this permit;
  - (b) Measures to control noise, dust, water and sediment laden runoff;
  - (c) Measures relating to removal of hazardous or dangerous material from the site, where applicable;
  - (d) A plan showing the location of parking areas for construction and sub-contractor vehicles on and surrounding the site, to ensure that vehicles associated with construction activity cause minimum disruption to surrounding premises. Any basement car park on the land must be made available for use by sub-constructors/tradespersons upon completion of such areas, without delay;
  - (e) A Traffic Management Plan showing truck routes to and from the site;
  - (f) Swept path analysis demonstrating the ability for trucks to enter and exit the site in a safe manner for the largest anticipated truck associated with the construction;
  - (g) A plan showing the location and design of a vehicle wash-down bay for construction vehicles on the site;
  - (h) Measures to ensure that sub-contractors/tradespersons operating on the site are aware of the contents of the Construction Management Plan;
  - (i) Contact details of key construction site staff;
  - (j) A site plan showing the location of any site sheds, on-site amenities, building waste storage and the like, noting that Council does not support the siting of site sheds within Council road reserves; and
  - (k) Any other relevant matters.

## Hours for Demolition and Construction Work

- 53 All works including earthworks, demolition and construction activity associated with the approved development must take place only during the following hours, except with the prior written consent of the Responsible Authority:

Monday to Thursday: 7:00am to 6:30pm

Friday: 7:00am to 5:00pm

Date Issued: 15 May 2018

Signature for the Responsible Authority: \_\_\_\_\_

  
Christopher Mullan

**ACTING PLANNING APPEALS CO-ORDINATOR – STATUTORY PLANNING**

Planning Permit No.: PP16/00827

Address of the Land: 21 & 23-27 Queens Avenue, Hawthorn

# VCAT Directed Plans

These plans/documents are available for viewing in accordance with the direction of the Victorian Civil and Administrative Tribunal in the matter of VCAT:Ref.P830/2023."

BOROONDARA  
City of Harmony

Saturday: 9:00am to 5:00pm

Sunday & Public Holidays: No construction

## Amenity of area

- 54 The amenity of the area must not be adversely affected by the use and development as a result of the:
- (a) Transport of materials, goods or commodities to or from the land; and/or
  - (b) Appearance of any building, works, stored goods or materials; and/or
  - (c) Emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, ash, dust, waste water, waste products, grit or oil; and/or
  - (d) The presence of vermin.

## Permit to Expire

- 55 This Permit will expire if:
- (a) The development does not start within two (2) years of the issue date of this Permit;
  - (b) The development is not completed within four (4) years of the issue date of this Permit.

In accordance with Section 69 of the Planning and Environment Act 1987, a request may be submitted to the Responsible Authority within the prescribed timeframes for an extension of the periods referred to in this condition.

## Notes:

*Headings are for ease of reference only and do not affect the interpretation of permit conditions.*

*This is not a Building Permit. A Building Permit may be required prior to the commencement of any works associated with the proposed development.*

*Prior to the commencement of any works on the site, the owner/developer must submit drainage plans for assessment and approval by the Responsible Authority (Asset Management).*

*Stormwater drains are to be connected to a legal point of discharge approved by Council. Drainage Connections within a road reserve, right-of-way, parkland, within an easement or to a Health Act drain must be to Council's standards. A Council Supervision Permit is required for this work. All fees and charges associated with the connection are to be borne by the applicant.*

Date Issued: 15 May 2018

Signature for the Responsible Authority: \_\_\_\_\_



Christopher Mullan

**ACTING PLANNING APPEALS CO-ORDINATOR – STATUTORY PLANNING**

Planning Permit No.: PP16/00827

Address of the Land: 21 & 23-27 Queens Avenue, Hawthorn

# VCAT Directed Plans

These plans/documents are available for viewing in accordance with the direction of the Victorian Civil and Administrative Tribunal in the matter of VCAT:Ref.P830/2023."

BOROONDARA  
City of Harmony

Prior to the commencement of any works on the site, the owner / developer must submit any new vehicular crossover or modification or alteration to an existing crossover proposal for assessment and approval by the Responsible Authority (Asset Management).

Plant, equipment or services (other than those shown on the endorsed plans) that are visible from a street or a public park may require further planning permission. This includes air-conditioners, solar panels, water tank and the like.

The Tree Protection Local Law requires that a Local Law Tree Permit be sought from Council for the removal and/or lopping of a 'Significant Tree' and/or excavation within the critical root zone of a Significant Tree. A list of Significant Trees is available at <http://www.boroondara.vic.gov.au/our-city/trees/significant-trees>. A Local Law Tree Permit is also required to remove, damage kill or destroy any identified 'Canopy Tree' which may include any excavation within the tree protection zone of a 'canopy tree'. The Tree Protection Local Law identifies a 'Canopy tree' as any tree with a single trunk circumference of 110cm or a combined circumference of a multi stemmed tree of 110cm or greater measured at 1.5m above ground level. A Planning Permit does not constitute a Local Law Tree Permit or permission to remove, damage kill or destroy a significant or canopy tree. The Tree Protection Local Law is available to download at <http://www.boroondara.vic.gov.au/our-city/trees/tree-works-permits> alternatively please contact Council's Arborist – Statutory Planning (telephone 9278 4888) should a Local Law Tree Permit be required.

An Asset Protection Permit is required prior to the commencement of site works in accordance with Council's Protection of Council Assets and Control of Building Sites Local Law 2011.

Prior consent from Council and any and all public authorities is required to be obtained for alteration or reinstatement of assets or services affected as a result of the development.

The full cost of reinstatement of any Council assets damaged as a result of demolition, building or construction works, must be met by the permit applicant or any other person responsible for such damage, to the satisfaction of the Responsible Authority.

Discharge to the legal point of discharge will be allowed subject to the flow being limited to a rate equivalent to pre-development levels or less. Any additional discharge and / or runoff above the pre-development level is to be detained on site, via an approved storm water detention system. This matter should be discussed with Council's Asset Management Department.

Prior to the commencement of the use, the details of any kitchen, food preparation area or other relevant facility requiring health approval must be submitted to Council's Health Department and the premises registered with Council under the Food Act 1984.

## Advertising signs notes

Date Issued: 15 May 2018

Signature for the Responsible Authority: \_\_\_\_\_



Christopher Mullan

**ACTING PLANNING APPEALS CO-ORDINATOR – STATUTORY PLANNING**

Planning Permit No.: PP16/00827

Address of the Land: 21 & 23-27 Queens Avenue Hawthorn

# VCAT Directed Plans

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Upon expiry of this permit, the continued display of the sign(s) approved under this permit is unlawful. Prior to the permit expiring, application for a new planning permit must be made if the continued display of the sign(s) is proposed.

Prior to the erection of any other advertising signs on the subject land, contact should be made with officers of Council's Statutory Planning Department to determine the relevant Planning Scheme controls.

Bunting, streamers, flags, wind-vanes or festooning must not be displayed without the written consent of the Responsible Authority.

## Apartment Buildings & Student Accommodation notes

Residents of the development approved by this permit will not be issued resident parking permits (including visitor parking permits).

Should the land cease to be used for student accommodation a new planning permit may be required for an alternative use. It should be noted that any dispensation for on-site car parking given to the student accommodation development may not be transferable to any proposed alternative use of the land. Any subsequent use will be assessed in accordance with the car parking provisions of the Boroondara Planning Scheme.

## Works over easement

Prior to the issue of a building permit, the owner must obtain the consents of all relevant authorities for any buildings or works, including any paving, fences and landscaping, over any easement or underground services under the control of a public authority including sewers, drains, pipes, wires or cables.

The owner must accept all reinstatement costs in carrying out repairs to any buildings, works or landscaping over the easements should such buildings, works or landscaping be disturbed by any works undertaken by Council in the future.

Date Issued: 15 May 2018

Signature for the Responsible Authority: \_\_\_\_\_



Christopher Mullan

**ACTING PLANNING APPEALS CO-ORDINATOR – STATUTORY PLANNING**

# VCAT Directed Plans

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## VCAT ISSUED PERMIT

### IMPORTANT INFORMATION ABOUT THIS PERMIT (see over)

#### WHAT HAS BEEN DECIDED?

The responsible authority has issued a permit at the direction of the Victorian Civil and Administrative Tribunal.  
(Note: This is not a permit granted under Division 5 or 6 of Part 4 of the **Planning and Environment Act 1987**.)

#### CAN THE RESPONSIBLE AUTHORITY AMEND THIS PERMIT?

The responsible authority may amend this permit under Division 1A of Part 4 of the **Planning and Environment Act 1987**.

#### WHEN DOES A PERMIT BEGIN?

A permit operates:

- from the date specified in the permit; or
- if no date is specified, from—
  - (i) the date of the decision of the Victorian Civil and Administrative Tribunal, if the permit was issued at the direction of the Tribunal; or
  - (ii) the date on which it was issued, in any other case.

#### WHEN DOES A PERMIT EXPIRE?

A permit for the development of land expires if—

- the development or any stage of it does not start within the time specified in the permit; or
- the development requires the certification of a plan of subdivision or consolidation under the Subdivision Act 1988 and the plan is not certified within two years of the issue of the permit, unless the permit contains a different provision; or
- the development or any stage is not completed within the time specified in the permit, or, if no time is specified, within two years after the issue of the permit or in the case of a subdivision or consolidation within 5 years of the certification of the plan of subdivision or consolidation under the **Subdivision Act 1988**.

2. A permit for the use of land expires if—

- the use does not start within the time specified in the permit, or if no time is specified, within two years after the issue of the permit; or
- the use is discontinued for a period of two years.

3. A permit for the development and use of land expires if—

- the development or any stage of it does not start within the time specified in the permit; or
- the development or any stage of it is not completed within the time specified in the permit, or, if no time is specified, within two years after the issue of the permit; or
- the use does not start within the time specified in the permit, or, if no time is specified, within two years after the completion of the development; or
- the use is discontinued for a period of two years.

4. If a permit for the use of land or the development and use of land or relating to any of the circumstances mentioned in section 6A(2) of the **Planning and Environment Act 1987**, or to any combination of use, development or any of those circumstances requires the certification of a plan under the **Subdivision Act 1988**, unless the permit contains a different provision—

- the use or development of any stage is to be taken to have started when the plan is certified; and
- the permit expires if the plan is not certified within two years of the issue of the permit.

5. The expiry of a permit does not affect the validity of anything done under that permit before the expiry.

#### WHAT ABOUT REVIEWS?

- The person who applied for the permit may apply for a review of any condition in the permit unless it was granted at the direction of the Victorian Civil and Administrative Tribunal, in which case no right of review exists.
- An application for review must be lodged within 60 days after the permit was issued, unless a notice of decision to grant a permit has been issued previously, in which case the application for review must be lodged within 60 days after the giving of that notice.
- An application for review is lodged with the Victorian Civil and Administrative Tribunal.
- An application for review must be made on the relevant form which can be obtained from the Victorian Civil and Administrative Tribunal, and be accompanied by the applicable fee.
- An application for review must state the grounds upon which it is based.
- A copy of an application for review must also be served on the responsible authority.
- Details about applications for review and the fees payable can be obtained from the Victorian Civil and Administrative Tribunal.

The contact details of the Victorian Civil and Administrative Tribunal are:

55 King Street, MELBOURNE VIC 3000. Telephone: (03) 9628 9777, Fax: (03) 9628 9789.

<http://www.vcat.vic.gov.au/>

# VCAT Directed Plans

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PUBLIC  
TRANSPORT  
VICTORIA

File: FOL/17/43513  
Ref: DOPT2017/0346

PO Box 4724  
Melbourne Victoria 3001  
Australia  
Telephone 1800 800 007  
ptv.vic.gov.au

Christine Daly  
Senior Planner – Statutory Planning  
City of Boroondara  
Christine.daly@boroondara.vic.gov.au

Dear Ms Daly

**BOROONDARA PLANNING SCHEME**  
**PLANNING APPLICATION NO: PP-16-00827**  
**PROPOSAL: 66 DWELLINGS**  
**ADDRESS: 23 QUEENS AVENUE HAWTHORN**

Thank you for your email dated 10<sup>th</sup> July 2017 referring the above application to Public Transport Victoria pursuant to Section 55 of the *Planning and Environment Act 1987*.

Public Transport Victoria, pursuant to Section 56(1) of the *Planning and Environment Act 1987* **does not object** to the grant of a planning permit subject to the following conditions:

**Conditions:**

1. Unless otherwise agreed in writing with Public Transport Victoria and VicTrack, windows and doors must not be placed on the title boundary with the Railway Land and no windows or doors are permitted to open beyond the Railway Land title boundary to the satisfaction of Public Transport Victoria and VicTrack.
2. Prior to the commencement of works, detailed construction/ engineering plans and computations for any construction or works likely to have an impact on railway operations or railway infrastructure assets are to be submitted and approved by VicTrack and the Rail Operator. The plans must detail all excavation of the site adjacent to the railway corridor, having any impact on the rail reserve, and ensure compliance regarding building clearances to aerial power lines as per the applicable Victorian Electrical Safety Regulations.
3. Unless otherwise agreed in writing with VicTrack permanent or temporary soil anchors must not be installed on railway land.
4. Prior to commencement of works, the Rail Operator must be contacted through the email address [metrositeaccess@metrotrains.com.au](mailto:metrositeaccess@metrotrains.com.au) to obtain the Rail Operator's conditions and safety requirements for works on, over or adjacent to railway land.
5. Any damage to the Rail Operator's infrastructure as a consequence of the construction works must be rectified to the satisfaction of the Rail Operator at full cost of the Permit holder.

# VCAT Directed Plans

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6. The Planning Permit holder must take all reasonable steps to ensure that disruptions to train operation within the railway corridor are kept to a minimum during the construction of the development and in compliance with the Rail Operators Safety and Environmental requirements within the Rail Operators construction control and indemnity agreement.
7. Building materials (including glass/window/ balcony treatments) likely to have an effect on train driver operations along the rail corridor must be non-reflective and avoid using red or green colour schemes.
8. No lighting is to be erected that throws light onto the railway tracks or which interferes with the visibility of signals and the rail lines by train drivers.
9. No drainage, effluent, waste, soil or other materials must enter or be directed to railway land or stored or deposited on railway land.
10. Entry onto railway land is at the discretion of the Rail Operator and is subject to the Rail Operator's Site Access Procedures and conditions.
11. The developer shall pay any Rail Operator costs required for the development documentation review or construction works due to the Permit as required by the Rail Operator.
12. Access to VicTrack land during construction and for maintenance purposes after completion will require permission from Metro Trains Melbourne and will be subject to both organisation's site access procedures and conditions.

Should you require any further clarification, please feel free to contact James Noy on telephone 03 8392 7984.

Yours sincerely



**MARGARET BURGE**

Senior Lawyer

9 / 8 / 17

cc: Applicant:

# VCAT Directed Plans

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VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P1758/2022

PERMIT APPLICATION NO. PP21/0610

## CATCHWORDS

Application for Review - Section 149 *Planning and Environment Act 1987*; Preliminary Hearing; Interpretation of a permit condition.

<b>APPLICANT</b>	Nan Xin Hawthorn Pty Ltd
<b>RELEVANT AUTHORITY</b>	Victorian Rail Track Corporation
<b>RESPONSIBLE AUTHORITY</b>	Boroondara City Council
<b>SUBJECT LAND</b>	21-27 Queens Avenue HAWTHORN VIC 3122
<b>HEARING TYPE</b>	Preliminary Hearing
<b>DATE OF HEARING</b>	7 March 2023
<b>DATE OF ORDER</b>	8 June 2023
<b>CITATION</b>	Nan Xin Hawthorn Pty Ltd v Boroondara CC [2023] VCAT 617

## ORDER

### Determination of Preliminary Questions

1 The answers are as follows:

Whether VicTrack and Metro Trains Melbourne’s assessment in relation to the plans submitted under condition 16 of Planning Permit PP21/0610 (Planning Permit) is limited to:

- a the engineering plans for the development already approved under the Planning Permit;

There are no engineering plans approved under the Planning Permit.

- b any impact on the communications DTRS Tower is not required to be considered under this assessment; and

VicTrack and Metro Trains Melbourne are not conducting a future assessment of the plans. For the purpose of this review proceeding, VicTrack is deemed to have refused to provide its refusal to approve the plans and computations prepared by the applicant and it is now for the Tribunal to determine whether to approve the plans.



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- c whether the public access to land is appropriate is outside of the scope of the Planning Permit and the assessment under condition 16.

Condition 16 is concerned with works “like to have an impact on railway operations or railway infrastructure assets.” Public access to land that is outside the boundaries of the subject land is not a matter that Condition 16 is concerned with or indeed something the Planning Permit can authorise.

## Transfer to the Standard List

- 2 This application is transferred from the Tribunal’s Fast Track List to the Standard List.

## Practice Day Hearing

- 3 This application is listed for a practice day hearing as detailed below.

The hearing will be at 55 King Street, Melbourne.

If there is any change to these details, the Tribunal will notify you.

Practice Day Hearing:	
Date	7 July 2023
Start time	For details of the start time, please refer to the Tribunal’s website ( <a href="http://www.vcat.vic.gov.au/todays-hearings">www.vcat.vic.gov.au/todays-hearings</a> ) after 5.00pm on the day before the hearing
Duration	30 minutes
Conduct	Online platform

The details of the online platform will be provided to the parties before the hearing.

- 4 The purpose of the practice day hearing is:
- to give directions about the future conduct of the proceeding;
  - whether the proceeding should be listed for a compulsory conference;
  - whether the parties should provide further and better particulars of their grounds or a statement of contentions; and
  - whether orders are required concerning the exchange of expert evidence.

- 5 Parties must attend the practice day hearing with the following information:



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- details of any other applications at the Tribunal that are related to this application;
- submissions, including any supporting evidence and documents, relating to the specific purpose of the practice day hearing (where relevant);
- if any party is seeking procedural directions, a copy of the directions sought.
- a draft of terms of settlement, if the matter is likely to be settled by consent on the day.

## Providing submissions and associated material before the hearing

- 6 No later than **5 business days** before both the practice day hearing, the parties must provide an electronic copy of their submissions and associated material (such as supporting documents, case law and photographs) to the Tribunal and all parties. The copy for the Tribunal must be sent to [admin@vcat.vic.gov.au](mailto:admin@vcat.vic.gov.au).
- 7 If a party is seeking specific orders or directions at the practice day hearing, a draft Microsoft Word copy of the orders or directions must be lodged electronically with the Tribunal and provided to the other parties. The copy for the Tribunal must be sent to [admin@vcat.vic.gov.au](mailto:admin@vcat.vic.gov.au). This must be completed **five business days prior** to the date of the practice day hearing.

Karina Shpigel  
**Member**



# VCAT Directed Plans

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## APPEARANCES

For Nan Xin Hawthorn Pty Ltd

Tania Cincotta, Lawyer, Best Hooper Lawyers.

For Boroondara City Council

Jock Farrow, Town Planner.

For Victorian Rail Track Corporation

Brett Collier, Lawyer, VicTrack.



# VCAT Directed Plans

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## REASONS

### WHAT IS THE PRELIMINARY HEARING ABOUT?

- 1 Nan Xin Hawthorn Pty Ltd (**applicant**) has made an application to the Tribunal under section 149(1)(a) of the *Planning and Environment Act 1987* seeking review of the failure of the Victorian Rail Track Corporation's (**VicTrack**)<sup>1</sup> to endorse certain plans and computations in satisfaction of condition 16 of Planning Permit PP21/0610 (**permit**).
- 2 The permit approves the construction of a ten storey building for the use of student accommodation and ground floor retail premises<sup>2</sup> at 21-23 Queens Avenue, Hawthorn (**subject land**). The permit was issued by Boroondara City Council (**responsible authority**) on 25 July 2022 at the direction of the Tribunal in *Nan Xin Hawthorn Pty Ltd v Boroondara CC* [2022] VCAT 748 on 7 July 2022.
- 3 Condition 16 of the permit states:  
**Conditions relating to railway land**  
...  
16 Prior to the commencement of works, detailed construction/ engineering plans and computations for any construction or works likely to have an impact on railway operations or railway infrastructure assets are to be submitted to and approved by VicTrack and the Rail Operator. The plans must detail all excavation of the site adjacent to the railway corridor, having any impact on the rail reserve, and ensure compliance regarding building clearances to aerial power lines as per the applicable Victorian Electrical Safety Regulations.
- 4 VicTrack owns the railway land abutting the subject land to the north, which is within the State Transport Zone pursuant to the Boroondara Planning Scheme (**planning scheme**). The land contains rail track and railway infrastructure. I was informed that a result of complex commercial and statutory arrangements, the land and the infrastructure is controlled, managed and leased by Metropolitan Trains Melbourne Pty Ltd (**Metro Trains**). I was informed that Metro Trains is also the relevant 'Rail Operator' referred to in condition 16 of the Permit.<sup>3</sup>
- 5 VicTrack is concerned about the impact of the approved development on the functioning of an existing rail signalling tower, which is part of the 'State Digital Train Radio Signalling' (**DTRS**) system. The tower is comprised of a 25 metre tall telecommunications pole that is located approximately 16 metres to the west of the subject land. VicTrack is concerned the development will affect radio communication between train

<sup>1</sup> VicTrack is the trading name of the Victorian Rail Track Corporation, which I was informed is a statutory corporation established under the *Rail Management Act 1996* (Vic) and continued under the *Transport Integration Act 2010* (Vic).

<sup>2</sup> The permit also approves a reduction in car parking requirements.

<sup>3</sup> Metro Trains is not a party to the proceeding.



drivers, the train control centre and signalers. VicTrack submits that Condition 16 of the permit requires the applicant to undertake a study of the impacts on the DTRS tower.

- 6 The proceeding was listed for a Preliminary Hearing to determine the following questions:
- Whether VicTrack and Metro Trains Melbourne's assessment in relation to the plans submitted under condition 16 of Planning Permit PP21/0610 (Planning Permit) is limited to:
    - a) the engineering plans for the development already approved under the Planning Permit;
  - Further:
    - b) any impact on the communications DTRS Tower is not required to be considered under this assessment; and
    - c) whether the public access to rail land is appropriate is outside of the scope of the Planning Permit and the assessment under condition 16.
  - To give directions about the future conduct of the proceeding.<sup>4</sup>

## THE DECISION UNDER REVIEW

- 7 On 4 November 2022, the applicant submitted to VicTrack and Metro Trains a range of engineering plans and documents for approval under condition 16 of the permit.
- 8 The parties appeared to be in agreement that the time for making a decision was 30 days, as is prescribed by regulation 54 of the Planning and Environment Regulations 2015.
- 9 The parties were in agreement that VicTrack never made a decision to approve the submitted plans and computations. VicTrack submits the assessment could not be undertaken because the applicant was unwilling to either provide or pay for a desk top study assessing the potential impacts of the development on the DTRS tower.
- 10 It was put to me that the material was required by Metro Trains and VicTrack was reliant upon Metro Trains to undertake the assessment. VicTrack submits the applicant did not provide sufficient information to enable an assessment to be undertaken.
- 11 It is unclear from the material whether a decision had been expressly made refusing to approve the plans because, according to VicTrack, the material was insufficient or whether there was simply a failure to make a decision within the prescribed time. In its Statement of Grounds, VicTrack states:

Without this engineering assessment, VicTrack cannot form an opinion of whether the requirements of condition 16 are satisfied.

<sup>4</sup> Tribunal Order dated 24 February 2023.



- 12 This is a matter that should be clarified in the application proceedings at a Main Hearing.
- 13 In any event, section 4(2)(d) of the *Victorian Civil and Administrative Tribunal Act 1998* (Vic) states:

#### 4 When does a person make a decision?

...

- (2) For the purposes of this Act or an enabling enactment—

...

- (d) a failure by a decision-maker to make a decision under an enactment within the period specified by that enactment is deemed to be a decision by the decision-maker at the end of that period to refuse to make the decision.

### THE QUESTIONS REFERRED TO THE PRELIMINARY HEARING

- 14 I consider the questions referred to the Preliminary Hearing to be rather unusual for a range of reasons. Firstly, the questions, which were prepared by the applicant, are clearly concerned with the interpretation of the permit and therefore should have been the subject of a declaration application under section 149A(1)(a) of the *Planning and Environment Act 1987*. A declaration application is the appropriate forum for the questions to be determined because the enquiry is concerned with the scope of a future assessment to be undertaken by VicTrack and the Rail Operator.
- 15 Secondly, the questions appear to be predicated on a decision not yet having been made. However, the whole basis for the review proceeding is the review of VicTrack's deemed or actual decision to refuse to approve the plans and computations.
- 16 Thirdly, the questions referred to the Preliminary Hearing contemplate that VicTrack and the Rail Operator remain the decision makers under condition 16. However, the consequence of the application under section 149 (1)(a) of the *Planning and Environment Act 1987* is to place the Tribunal in the shoes of the original decision maker and gives the Tribunal the function of determining whether the decision should be affirmed, varied, set aside or remitted.<sup>5</sup>
- 17 It follows from this, that it is for Tribunal to assess whether the plans and computations required to be submitted to VicTrack for approval by condition 16 of the permit, should in fact be approved as is contended by the applicant.
- 18 I wish to make two further observations. The questions referred to the Preliminary Hearing make reference to 'VicTrack and Metro Trains Melbourne's assessment in relation to the plans submitted under condition 16'. However, Metro Trains is not a specified body for the purpose of

<sup>5</sup> Section 51 of the *Victorian Civil and Administrative Tribunal Act 1998*.



section 149 of the *Planning and Environment Act 1987* and therefore its decision (or refusal to make a decision) cannot be the subject of an application under this provision. The applicant acknowledged this to be the case in the Preliminary Hearing.

- 19 Furthermore, the Preliminary Hearing questions make reference to ‘approved engineering plans under the permit’ however no engineering plans are required to be approved or indeed have been approved by the responsible authority pursuant to the permit. This was also acknowledged by the applicant.

## PUBLIC ACCESS TO VICTRACK LAND

- 20 VicTrack appeared to accept in the hearing that public access from the subject land to the adjoining railway land is a matter for it to determine outside of the planning permit. The planning permit cannot in itself require access to be granted or authorise a form of trespass. Furthermore, this is not an issue that condition 16 is concerned with.

## THE REAL ISSUE IN DISPUTE

- 21 The real dispute in this proceeding appears to concern the scope of impacts that are required to be addressed by the condition 16 plans and computations for which VicTrack’s approval is required under the permit.
- 22 The applicant submits condition 16 is concerned with direct impacts from the construction of the development on the rail reserve land directly adjacent to the subject land and not with impacts on the DTRS tower which is located 16 metres away. The applicant says the condition is not concerned with impacts that would require amendments to the approved development by the permit.
- 23 VicTrack submits the DTRS tower is transport infrastructure and is located proximate to the subject land, on land owned by VicTrack. VicTrack contends the construction of the development will likely impact on the functioning of the DTRS Tower and the associated communication equipment.
- 24 The dispute between the parties is mainly theoretical because at this stage the extent of impacts ‘on railway operations or railway infrastructure assets’ appear to be unknown and as a consequence, it is not known:
  - whether the construction of the development is likely to have *any* impact on the DTRS Tower;
  - what the extent of the impact on the DTRS Tower might be; and
  - relevantly whether the extent of any impact would be a basis for VicTrack, and the Tribunal on review, to refuse to approve the plans and computations required by condition 16 before the construction of the development can commence.

- 25 It also unclear what the likely impacts will be on the railway land directly abutting the subject land, although the applicant appears to consider these impacts are capable of being approved by VicTrack under condition 16.<sup>6</sup>
- 26 There is also a critical question concerning the purpose of approval under condition 16 of the permit. The condition appears to only require detailed plans and computations identifying likely impacts. I observe that condition 16 does not contain any express requirement for VicTrack to agree to the appropriateness of the likely impacts.<sup>7</sup> Condition 16 is also not akin to a condition 1 requirement for amended plans to address or ameliorate impacts.
- 27 There is certainly nothing in condition 16 that could be taken to mean that the approval of plans and computations by VicTrack would release the applicant or the development from complying with the requirements of other laws. This includes the *Building Act 1993* (Vic) and the Building Regulations 2018 which deal with protection works for adjoining property.<sup>8</sup> There may also be other transport laws concerned with protecting 'railway operations or railway infrastructure assets'.
- 28 To the extent this is of central concern to VicTrack as the adjoining landowner, I question whether these are matters that would be more appropriately addressed outside of the planning process, notwithstanding the inclusion of this (albeit unusual) condition in the permit.
- 29 The approval of plans and computations under condition 16 is certainly not an opportunity to reassess the merits of the approved development. However it is to be acknowledged that the identification of impacts may result in protection works being required under the *Building Act 1993* and hypothetically this may necessitate changes to the approved development down the track.
- 30 Ultimately, the question of whether the material submitted by the applicant for approval under condition 16 sufficiently details 'any construction or works likely to have an impact on railway operations or railway infrastructure assets' is a matter to be determined at the Main Hearing of the review application. To the extent there is a dispute about the scope of the impacts, this will need to be addressed as part of the merits review.

## FAST TRACK LIST AND FUTURE CONDUCT

- 31 The proceeding was automatically included in the Fast Track List because it is a section 149 (1) application. Having regard to the nature of the issues

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<sup>6</sup> According to the applicant, the 'likely impacts' are shown in the plans and computations submitted to VicTrack. I was not taken through the content of those plans and that is a matter for the Main Hearing.

<sup>7</sup> It is a matter for the Tribunal in the Main Hearing to determine the requisite level of satisfaction for approval to be provided under condition 16.

<sup>8</sup> The requirement to protect adjoining property from building impacts is addressed by Part 7 of the *Building Act 1993* (Vic).

# VCAT Directed Plans

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and where the parties are at with their materials, I consider that the proceeding should be removed from the Fast Track List.

- 32 The applicant has chosen to seek merits review under section 149 of *Planning and Environment Act 1987* but there are other remedies available. I have already indicated it could have applied for a declaration. Alternatively it could also seek to amend the permit to delete condition 16.
- 33 I have listed the matter for a Practice Day Hearing to consider the next steps, including consideration as to whether the parties would benefit from a compulsory conference.

Karina Shpigel  
**Member**



# VCAT Directed Plans

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VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P830/2023

PERMIT NO.PP21/0610

**APPLICANT** Nan Xin Hawthorn Pty Ltd  
**RESPONSIBLE AUTHORITY** Boroondara City Council  
**SUBJECT LAND** 21-27 Queens Avenue  
HAWTHORN VIC 3122  
**DATE OF ORDER** 29 June 2023

## ORDER

### Hearing

- 1 This application is listed for a hearing as detailed below.  
The hearing will be at 55 King Street, Melbourne.  
If there is any change to these details, the Tribunal will notify you.

Short Cases Hearing:	
Date and time	26 September 2023 9.30 am – up to 3 hours
Conduct	Online Platform

The details of the online platform will be provided to the parties before the hearing.

### What the applicant must do

- 2 By **18 July 2023** the applicant must give the following documents to the responsible authority:
- a copy of the application and all attachments; and
  - any other material given to the Tribunal; and
  - a copy of this order.
- 3 By **1 August 2023** the applicant must give notice of the application in accordance with the directions set out in Appendix A and the information received from the responsible authority in response to Order 5.
- 4 By **1 August 2023** the applicant must give notice of the application in accordance with the directions set out in Appendix A to Victorian Rail Track Corporation and Metro Trains.
- 5 By **22 August 2023** the applicant must give to the Tribunal:
- a completed statement of notice; and
  - a list of names and addresses of all persons and authorities who were notified; and



# VCAT Directed Plans

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- a sample of the letter sent with the documents; and
- all other information required by the statement of notice

If a statement of notice is not given to the Tribunal by **22 August 2023**, this application may be struck out. No reminder will be sent.

## What the responsible authority must do

- 6 By **25 July 2023**, the responsible authority must give the following to the applicant and the Tribunal:
  - the names and addresses of all relevant referral authorities; and
  - the names and addresses of all persons it considers may have a material interest in the outcome of this application to amend a permit who should be given notice of the application; and
  - details of any other form of notice which should be given (such as the display of a sign on the land and/or publication of notice in the newspaper).
- 7 By **1 August 2023** the responsible authority must make available for inspection at its main office and display on its website a complete copy of the application and all attachments.
- 8 By **1 August 2023** the responsible authority must give the information required by the Tribunal's Practice Notice **PNPE2 – Information from Decision Makers (PNPE2)** to the Tribunal, unless this material has already been given in another related proceeding. The responsible authority must give a copy of the completed table of PNPE2 to the applicant. The attachments do not need to be given to the applicant.

## Statement of grounds

- 9 If you want to become a party and take part in this proceeding, you must complete a Statement of Grounds online at [www.vcat.vic.gov.au/respondplanning](http://www.vcat.vic.gov.au/respondplanning) and give a copy to the responsible authority and the applicant by **22 August 2023**.

(Note: you must also pay a fee. Information regarding fees is available at [www.vcat.vic.gov.au/fees](http://www.vcat.vic.gov.au/fees). A fee does not apply to referral authorities.)

## What all parties must do

- 10 No later than **5 business days** before the hearing, the parties must provide an electronic copy of their submissions and associated material (such as supporting documentation, case law and photographs) to the Tribunal and all parties. The copy for the Tribunal must be sent to [admin@vcat.vic.gov.au](mailto:admin@vcat.vic.gov.au)
- 11 All expert evidence must be filed and served in accordance with the Tribunal's Practice Note PNVCAT2 Expert Evidence.

# VCAT Directed Plans

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## Requests for procedural orders

- 12 Any request for procedural orders from the Tribunal must be made in writing and a copy must be given to all parties.

Philip Martin  
**Senior Member**

# VCAT Directed Plans

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## HELP AND SUPPORT

Information for all parties is available at the Tribunal's website  
[www.vcat.vic.gov.au](http://www.vcat.vic.gov.au)

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## HOW MUST THE APPLICANT GIVE NOTICE OF THIS APPLICATION?

This order requires the applicant to give notice of the application. Notice must be given to the following persons:

- the owner and occupier of the subject land,
- any persons who may have a material interest in the outcome of the application who are named in the application,
- any additional persons identified by the responsible authority in response to Order 5,
- all relevant referral authorities.

The notice must comprise the following

- a copy of the application (the attachments do not need to be given),
- a copy of this order,
- a description of the proposed changes to the permit, including details of the changes from the previous plans,
- a letter that must:
  - explain that an application to amend a permit has been made to the Tribunal,
  - advise that a complete copy of the application, including amended plans, can be inspected at the main office of the responsible authority and on the responsible authority's website
  - advise that a copy of the amended plans and/or other attachments can be obtained by request from the applicant
  - specify the date in Order 8 as the date by which any Statement of Grounds form must be given to the Tribunal, to the responsible authority and to the applicant,
  - advise that they must provide a completed Statement of Grounds form in order to take part in the proceeding,
  - specify the date and time scheduled for the hearing
  - if applicable, include a statement identifying those matters within the application for which there is no right of review under section 82 of the *Planning and Environment Act 1987*.
- If the responsible authority has advised that a sign must be displayed on the land, this must be done by the date specified in Order 3. You must use the sign provided by the Tribunal and it must be completed to include all the required information. You must maintain the sign in good order and condition for not less than 14 days from the day it is put up on the land.
- If the responsible authority has advised that notice of the application must be published in a newspaper, this must be done within 7 days of the date specified in Order 3.

The sign displayed on the land and the notice published in the newspaper must:

- Explain that if a person wants take part in this proceeding, they must complete a Statement of Grounds form (available at [www.vcat.vic.gov.au/respondplanning](http://www.vcat.vic.gov.au/respondplanning)) and specify that the completed Statement of Grounds form must be given to the Tribunal, to the responsible authority and to the applicant by the date specified in Order 8.
- Specify the date and time of the hearing as specified in Order 1.
- If applicable, set out those matters within the permit application for which there is no right of review under section 82 of the *Planning and Environment Act 1987*.

### Dispute about notice

If the applicant disagrees with the responsible authority about the extent of notice to be given, or the responsible authority fails to give the information by the date specified in Order 5, the applicant may request an urgent practice day hearing to resolve the dispute.

## PLANNING AND ENVIRONMENT LIST

## STATEMENT OF NOTICE

To be completed by or for the Applicant

Subject Land	21-27 Queens Avenue HAWTHORN VIC 3122	VCAT Ref: P830/2023
--------------	--	---------------------

I, .....(Print full name)  
of .....(Print name of firm, if relevant)  
.....(Print address)  
.....

**STATE** to the Victorian Civil and Administrative Tribunal (VCAT) that:

- On ..... (**date of service**) I served on the responsible authority a hard copy and a copy in electronic PDF form of the application and all attachments and other material filed with the Tribunal and a copy of the initiating order.
- (**Only complete if applicable**) I caused Notice of the Application to VCAT to be given by publishing the notice in the following newspapers.

Name of Newspaper	Date of Publication

I attach clippings of the notices published.

- (**Only complete if applicable**) On ..... (**date of erection**) I caused Notice of the Application to VCAT to be given by erecting a sign on the subject land.

Such notice was maintained in good condition on the land for not less than 14 days until it was removed on ..... (**date of removal**)

I erected the following number of signs in the following locations:

Number of signs erected (total)	
Location of signs erected: Specify each street frontage or other location	

I attach the following document (**tick as applicable**)

- ☐ Original sign erected on the land  
☐ True copy of the completed sign erected on the land



# VCAT Directed Plans

4. On ..... (date of service) I served the following documents on each of the persons specified below by post\*/by email\*/in person\*/ ~~(\*delete whichever does not apply)~~ **Documents served:**

- a copy of the application (excluding attachments) and any other relevant documents required to be served by VCAT's initiating order;
- a copy of the VCAT initiating order;

**Persons served: (tick as appropriate)**

- ☐ any referral authorities
- ☐ those persons set out in the attached list I obtained from the relevant municipal council or other responsible authority
- ☐ any person directed by the Tribunal
- ☐ any other person or authority

I attach copies of the following documents.

**Documents attached: (tick as appropriate)**

- ☐ list of names and addresses of all persons or authorities served
- ☐ copy of sample cover letter sent with documents served

**ALTERNATIVELY**

5. There are no objectors or referral authorities to serve because:
- ☐ The responsible authority did not require notice to be given to anyone
  - ☐ The application is exempt from third party notice and review rights

I understand that knowingly giving false or misleading information to VCAT may result in imprisonment or fine (section 136 of the *Victorian Civil and Administrative Tribunal Act 1998*).

Signature ..... Date.....



# VCAT Directed Plans

These plans/documents are available for viewing in accordance with the direction of the Victorian Civil and Administrative Tribunal in the matter of VCAT:Ref.P830/2023 .”

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL  
PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P830/2023  
PERMIT NO.PP21/0610

**APPLICANT** Nan Xin Hawthorn Pty Ltd  
**RESPONSIBLE AUTHORITY** Boroondara City Council  
**SUBJECT LAND** 21-27 Queens Avenue  
HAWTHORN VIC 3122  
**DATE OF ORDER** 29 June 2023

## ORDER

### Hearing

- 1 This application is listed for a hearing as detailed below.  
The hearing will be at 55 King Street, Melbourne.  
If there is any change to these details, the Tribunal will notify you.

Short Cases Hearing:	
Date and time	26 September 2023 9.30 am – up to 3 hours
Conduct	Online Platform

The details of the online platform will be provided to the parties before the hearing.

### What the applicant must do

- 2 By **18 July 2023** the applicant must give the following documents to the responsible authority:
- a copy of the application and all attachments; and
  - any other material given to the Tribunal; and
  - a copy of this order.
- 3 By **1 August 2023** the applicant must give notice of the application in accordance with the directions set out in Appendix A and the information received from the responsible authority in response to Order 5.
- 4 By **1 August 2023** the applicant must give notice of the application in accordance with the directions set out in Appendix A to Victorian Rail Track Corporation and Metro Trains.
- 5 By **22 August 2023** the applicant must give to the Tribunal:
- a completed statement of notice; and
  - a list of names and addresses of all persons and authorities who were notified; and



# VCAT Directed Plans

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- a sample of the letter sent with the documents; and
- all other information required by the statement of notice

If a statement of notice is not given to the Tribunal by **22 August 2023**, this application may be struck out. No reminder will be sent.

## What the responsible authority must do

- 6 By **25 July 2023**, the responsible authority must give the following to the applicant and the Tribunal:
  - the names and addresses of all relevant referral authorities; and
  - the names and addresses of all persons it considers may have a material interest in the outcome of this application to amend a permit who should be given notice of the application; and
  - details of any other form of notice which should be given (such as the display of a sign on the land and/or publication of notice in the newspaper).
- 7 By **1 August 2023** the responsible authority must make available for inspection at its main office and display on its website a complete copy of the application and all attachments.
- 8 By **1 August 2023** the responsible authority must give the information required by the Tribunal's Practice Notice **PNPE2 – Information from Decision Makers (PNPE2)** to the Tribunal, unless this material has already been given in another related proceeding. The responsible authority must give a copy of the completed table of PNPE2 to the applicant. The attachments do not need to be given to the applicant.

## Statement of grounds

- 9 If you want to become a party and take part in this proceeding, you must complete a Statement of Grounds online at [www.vcat.vic.gov.au/respondplanning](http://www.vcat.vic.gov.au/respondplanning) and give a copy to the responsible authority and the applicant by **22 August 2023**.

(Note: you must also pay a fee. Information regarding fees is available at [www.vcat.vic.gov.au/fees](http://www.vcat.vic.gov.au/fees). A fee does not apply to referral authorities.)

## What all parties must do

- 10 No later than **5 business days** before the hearing, the parties must provide an electronic copy of their submissions and associated material (such as supporting documentation, case law and photographs) to the Tribunal and all parties. The copy for the Tribunal must be sent to [admin@vcat.vic.gov.au](mailto:admin@vcat.vic.gov.au)
- 11 All expert evidence must be filed and served in accordance with the Tribunal's Practice Note PNVCAT2 Expert Evidence.

# VCAT Directed Plans

These plans/documents are available for viewing in accordance with the direction of the Victorian Civil and Administrative Tribunal in the matter of VCAT:Ref P830/2023. "

## Requests for procedural orders

- 12 Any request for procedural orders from the Tribunal must be made in writing and a copy must be given to all parties.

Philip Martin  
**Senior Member**

# VCAT Directed Plans

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## PLANNING AND ENVIRONMENT LIST

## STATEMENT OF NOTICE

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.....(Print address)  
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Signature ..... Date.....



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## VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

### ADMINISTRATIVE DIVISION

#### PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P2399/2017  
PERMIT APPLICATION NO. PP16/00827

#### CATCHWORDS

Section 77 of the *Planning and Environment Act 1987*, Commercial 1 Zone, Design and Development Overlay 17, Height, Car parking.

<b>APPLICANT</b>	Queens Avenue Developments Pty Ltd
<b>RESPONSIBLE AUTHORITY</b>	Boroondara City Council
<b>REFERRAL AUTHORITY</b>	Public Transport Victoria
<b>SUBJECT LAND</b>	21 & 23-27 Queens Avenue, Hawthorn
<b>WHERE HELD</b>	Melbourne
<b>BEFORE</b>	Tracey Bilston-McGillen, Presiding Member K L Partenio, Member
<b>HEARING TYPE</b>	Hearing
<b>DATE OF HEARING</b>	26, 27 & 28 March 2018
<b>DATE OF ORDER</b>	26 April 2018
<b>CITATION</b>	Queens Avenue Developments Pty Ltd v Boroondara CC [2018] VCAT 629

#### ORDER

- 1 Pursuant to the VCAT Act 1998, Schedule 1 clause 64(2), the Tribunal permits the following plans to be substituted for the plans accompanying the application:  
  
Plans prepared by Rothe Lowman - Project No. 216193, drawing nos:  
TP00.00-TP00.02, TP01.00 A, TP01.01 B, TP01.02 C- TP01.03C,  
TP01.04B-TP01.07B, TP01.08-TP01.09, TP02.01B-TP02.05B, TP03.01A,  
TP03.02B, TP03.03A, TP04.01-TP04.07, TP05.01A, TP05.02-TP05.04,  
TP05.05A-TP05.06A, TP05.07-TP05.08, TP05.09A, TP05.10-TP05.14,  
TP05.15A, TP07.01C.
- 2 The decision of the responsible authority in relation to permit application no. PP16/008277 is set aside.
- 3 A permit is granted in relation to land at 21 & 23-27 Queens Avenue, Hawthorn. The permit will allow:

# VCAT Directed Plans

These plans/documents are available for viewing in accordance with the direction of the Victorian Civil and Administrative Tribunal in the matter of VCAT Ref P830/2023.

- The use and development of a ten (10) storey building comprising not more than 66 dwellings, ground floor office space plus three basement levels; and
- To reduce the residential visitor parking requirement generally in accordance with the endorsed plans and subject to the conditions contained in Appendix A.

Tracey Bilston-McGillen,  
**Presiding Member**

K L Partenio,  
**Member**

## APPEARANCES

For applicant

Mr Nick Tweedie SC & Ms Jennifer Trehwella. They called the following witnesses:

Mr Mark Sheppard of David Lock Associates – Urban Designer

Ms Sophie Jordan, Sophie Jordan Consulting – Town Planner

Ms Charmaine Dunstan, Traffix Group – Traffic Engineer

For responsible authority

Ms Mimi Marcus of Maddocks. She called the following witness:

Mr Andrew Partos of Hansen Partnership – Urban Designer

For referral authority

No appearance

# VCAT Directed Plans

These plans/documents are available for viewing in accordance with the direction of the Victorian Civil and Administrative Tribunal in the matter of **VCAT:Ref.P830/2023 ."**

## INFORMATION

Description of proposal	Use and development of a ten (10) storey building comprising not more than 66 dwellings, ground floor office space plus three basement levels; and to reduce the residential visitor parking requirement.
Nature of proceeding	Application under section 77 of the <i>Planning and Environment Act 1987</i> – to review the refusal to grant a permit.
Planning scheme	Boroondara Planning Scheme.
Zone and overlays	Commercial 1 Zone ( <b>C1Z</b> ) Design and Development Overlay Schedule 17 ( <b>DDO17</b> ) Environmental Audit Overlay ( <b>EAO</b> ) Parking Overlay Schedule 1 ( <b>PO1</b> )
Permit requirements	Clause 34.01-1. A permit is required for the use of a dwelling (because the ground level entry exceeds two metres). Clause 34.01-4, A permit is required to construct a building or carry out works. Clause 43.02. A permit is required to construct a building or carry out works. Clause 52.06-3. A permit is required to reduce the number of car parking spaces required under clause 52.06-5.
Relevant scheme policies and provisions	Clauses 9, 10, 11, 15, 16, 18, 19, 21, 22.06, 34.01-1, 34.01-4, 43.02-2, 45.03, 45.09, 52.06, 52.34, 58 and 65.
Land description	The subject site is broadly an L-shaped lot located at 21 - 27 Queens Avenue, Hawthorn. The site has a frontage to Queens Avenue of 32.24 metres, a rear boundary of 21.42 metres, a depth of 42.65 metres and a total site area of 1217 square metres.  The site is currently occupied by two industrial buildings with vehicular access from Queens Avenue. The site is relatively flat, falling towards the north.
Tribunal inspection	We inspected the site and surrounds.

These plans/documents are available for viewing in accordance with the direction of the Victorian Civil and Administrative Tribunal in the matter of VCAT:Ref.P830/2023 ."

## REASONS<sup>1</sup>

### Overview

- 1 This case involves an application to develop the site with a 10 storey mixed use development in Queens Avenue Hawthorn. Council refused the proposed development on the grounds that the proposed development fails to achieve planning policy at clauses 15 and 22.10, fails to satisfy the requirements of DDO17, concerns with the built form and the reduction of six visitor car parking spaces is inappropriate.
- 2 The permit applicant submitted that the proposal enjoys policy support for higher density development, the extent of change proposed is consistent with the expectations of the DDO17, the proposed built form responds comfortably to both the existing and emerging character of Queens Avenue, the proposal manages its relationship with adjoining properties, offers a good level of internal amenity and is able to accommodate the residential and office car parking on site.
- 3 The key issues for discussion are:
  - i The appropriateness of the height of the building;
  - ii The adequacy of the parking provision;
  - iii The level of activation of the frontage;
  - iv Whether the development has any adverse impacts on the equitable development rights of the site to its immediate west; and
  - v Other matters including the proposed permit condition relating to the public pedestrian link and internal amenity.
- 4 We have decided to grant a permit for the development of the land for the purpose of residential dwellings and an office within a building that is a maximum of 33.3 metres (10 storeys) in height. The grant of this permit acknowledges:
  - a. the development will achieve the design objectives of DDO17;
  - b. the development is of exemplar quality design and will make a positive contribution to the character of the neighbourhood; and
  - c. the additional height will result in specific design benefits through the more efficient use of the land, an effective widening of the footpath along the frontage and the provision of a public pedestrian link through the site without any adverse impacts.

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<sup>1</sup> The submissions and evidence of the parties, any supporting exhibits given at the hearing, and the statements of grounds filed; have all been considered in the determination of the proceeding. In accordance with the practice of the Tribunal, not all of this material will be cited or referred to in these reasons.

These plans/documents are available for viewing in accordance with the direction of the Victorian Civil and Administrative Tribunal in the matter of VCAT Ref.P830/2023."

## The Site and its context

- 5 The site is a relatively large amalgamated site located within the Burwood Road commercial corridor to the west of Auburn Road and backs onto the rail line which provides an informal pathway connecting between Auburn Road and Henry Street. It is not within a heritage overlay although it is near two heritage sites within heritage overlays including a Church directly opposite the site that has its main frontage to Burwood Road.
- 6 Queens Avenue is a street that is undergoing rapid change. A number of multi-storey residential buildings have already started to replace former industrial and commercial buildings, including on the abutting site to the east. These new buildings were all approved under a mandatory height limit of 22 metres. Unlike the present discretionary height limit, the former mandatory height limit excluded roof structures and it is noted that the adjacent building has been approved with an overall height of 26.4 metres, including its lift overrun.

## The appropriateness of the height of the building

- 7 DDO17 (Commercial Corridors) applies to the site. The design objectives of DDO17 are:
  - To ensure the height and setbacks of development enhances the established streetscape and commercial character of the corridor.
  - To achieve innovative, high quality architectural design that makes efficient use of land whilst enhancing the appearance and strengthening the identity of the commercial corridors.
  - To ensure appropriate development that is complementary to the existing neighbourhood character and has regard to adjoining residential amenity.
  - To ensure development respects and enhances identified heritage buildings and precincts.
- 8 DDO17 establishes a number of height and setback requirements including:
  - Maximum Street Wall Height: 11 metres.
  - Minimum Upper Storey Setback: 5 metres.
  - Maximum Overall Building Height: 22 metres.
- 9 Where a proposal exceeds the preferred maximum building height, a number of guidelines are established including:

Where the applicant demonstrates, to the satisfaction of the responsible authority, that all of the following would be satisfied:

  - The proposed development would achieve the design objectives of this schedule and relevant policy and provisions of this planning scheme.

These plans/documents are available for viewing in accordance with the direction of the Victorian Civil and Administrative Tribunal in the matter of VCAT Ref P2399/2017.

- The development is of an exemplary quality that would make a positive contribution to the character of the neighbourhood.
  - The additional height would:
    - result in specific design benefits, and
    - not have an adverse impact on heritage values, the public realm or the amenity of adjoining properties.
- 10 Council submitted that Queens Avenue is undergoing a progressive transformation with taller development emerging in line with DDO17. Council further put to us that development in Queens Avenue does not exceed the preferred maximum overall height of DDO17. It is an important distinction to note that the existing taller buildings that have been constructed or currently under construction were considered under a mandatory height restriction. Until 2 June 2016, Schedule 16 to the DDO (Neighbourhood Centres and Commercial Corridors) imposed a mandatory maximum overall building height, with the exception architectural rooftop features or rooftop services including communal outdoor spaces. We make the observation that this explains the overall height of the buildings within Queens Avenue.
- 11 It was also Council's submission that the proposed height fails to achieve the first design objective 'to ensure the height and setbacks of development enhances the established streetscape and commercial character of the corridor' as it fails to enhance the established streetscape and commercial character of the corridor and fails to respond to the emerging built form that ranges from 3 up to 8 storeys.
- 12 Council called urban designer Mr Partos who submitted that a building approved over the discretionary height limit should be both innovative and exemplar. He provided a definition of exemplar which included as being a potentially award winning model that sets a high quality benchmark. Mr Partos further criticised the visual impact of the height when viewed by passing train passengers and from streets to the north of the rail line, including Malmsbury and Allens Streets and criticised the visual impact of services rooms along the frontage. He acknowledged that the pedestrian link through the site was a 'specific design benefit' of the proposal.
- 13 The permit applicant also addressed us on the term 'exemplar' and how to apply it having regard to DDO17. It was put that the word 'exemplar' is not defined and should be given its ordinary meaning which is: 'serving as a model or pattern'<sup>2</sup> but does not mean 'award winning'.
- 14 The permit applicant submitted that it would be difficult for every building within the Burwood Road corridor to contain innovation and that the dictionary definition of exemplary was for a model worthy of being copied, it did not necessarily need to be capable of being worthy of an award, rather

<sup>2</sup> The New Shorter Oxford English Dictionary, 1993, p878.

These plans/documents are available for viewing in accordance with the direction of the Victorian Civil and Administrative Tribunal in the matter of **VCAT Ref P830/2023**.

it need to be better or above average standard. The permit applicant also referred to the provision of the public pedestrian link through the site and the setback of the frontage to allow an effective widening of the Queens Avenue footpath as further specific design benefits.

- 15 DDO17 also makes reference to the additional height would result in 'specific design benefits'.
- 16 Mr Sheppard gave evidence that exemplary meant a model for further development, a good example for others to follow. He found the building to be well designed with three clear elements the base and middle following the mandatory wall height requirements, whilst the additional levels at the top were well recessed.
- 17 Mr Sheppard found that the building was well articulated with the upper levels sufficiently recessed so as not to be visible from the opposite side of the street and to a large extent will be hidden behind other existing or future buildings built along the street from views along the street. He further found that the additional height will not result in any unreasonable effect on the amenity of adjoining properties, including overshadowing. He considered the palate of materials was appropriate and capable of creating visual interest.
- 18 Council addressed the matter of 'specific design benefits' and submitted that there is a benefit to the public realm afforded by the pedestrian link but submits that the pedestrian link alone does not warrant the quantum of height exceedance sought by this proposal.
- 19 In respect to the term 'specific design benefits', the permit applicant referred to a verbal decision<sup>3</sup> by his Honour J Cavanough in the Supreme Court of Appeal of a decision by the Tribunal in *W Property Group Pty Ltd v Boroondara CC*<sup>4</sup> to allow a permit for a building two storeys above the discretionary height limit in DDO17 on a nearby site at 18-22 Lilydale Grove, Hawthorn. His Honour's ruling made the following conclusion:  

The applicant's case for leave to appeal reduces to an assertion that the provision of extra accommodation in a development can never amount to a specific design benefit within the meaning of clause 2.0 of DDO17. I do not accept that assertion. Provision for additional accommodation is capable of being regarded by a responsible authority or VCAT as a specific design benefit of additional height. It was so regarded here by the tribunal, in my opinion, albeit that the reasons could have been more explicit in spelling that out. In my view it is necessarily implied in the tribunal's reasons.
- 20 Having regard to the provisions of DDO17, we find that the additional height is appropriate.

<sup>3</sup> RULING Boroondara City Council 18-0281, dated 06/03/18

<sup>4</sup> *W Property Group Pty Ltd v Boroondara CC* [2017] VCAT 1238

# VCAT Directed Plans

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- 21 We consider that the building is of a high quality architectural design that will make a positive contribution to the neighbourhood.
- 22 Proposed levels 7 and 8 provide an additional ten dwellings. Having regard to the Ruling above, we consider that ten additional dwellings will contribute to urban consolidation policies and can be considered to be a specific design benefit of the proposal.
- 23 The building provides a pedestrian link from Queens Avenue through the site. This link will be made available for the majority of the day but there may be some restricted access at night. We understand this link was suggested by Council. Complete access from Henry Street to Auburn Road at the rear of the site along the rail line is currently prevented. However, the provision of access from the rear of the site to Auburn Road will be available. We further consider that in time access from Henry Street to Auburn Road along the railway line (rear of the site and others fronting Queens Avenue) will be made available. We consider this pedestrian link to be a specific design benefit of the proposal for future residents and the wider community.
- 24 The closest heritage building is located on the south side of Queens Avenue and fronts Burwood Road. We do not consider there is any impact on the heritage values of this building.
- 25 The photomontages<sup>5</sup> demonstrate the level of visibility of the building looking east and west to the site. Mr Sheppard also provided sightlines of the proposed building if standing on the southern side of Queens Avenue. Mr Sheppard's evidence details that as the proposed setbacks for levels 7 and 8 are setback a minimum of 10 metres from Queens Avenue and level 9 is set back a minimum of 14.7 metres, these levels will not be visible when viewed from the public realm in front of the site. The photomontages demonstrated that looking east from Henry Street, due to the low nature of the existing buildings at 19 Queens Avenue, the proposal will be highly visible. Looking west from Auburn Road, a view of the proposal is obstructed due to the existing building under construction. The Tribunal has well established the principle that 'visibility in its own right' is not the test for acceptability. We agree with this principle and find that whilst the additional levels will be partially visible at this time, as Queens Avenue is developed, this view will be either built out or filtered by surrounding development. We do not find that there will be any significant adverse impacts of the proposal notwithstanding that it may be visible from some viewpoints.
- 26 Overall, we are satisfied that the proposal meets the objectives of DDO17 to allow for a building to exceed the preferred maximum height. We consider that the proposal provides a number of specific design benefits which will be available to the local and wider community.

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<sup>5</sup> Prepared by Floodslicer and submitted as evidence.

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## The level of activation of the frontage

- 27 The proposed building is set back a minimum of 1.8 metres from the street boundary to provide for a footpath. The office building has a large window to the street but its access is gained from a door into a corridor. A substation, fire booster and garage door are also provided to the street frontage. The residential lobby is set back from the street by 4 metres. This entrance provides a door to a lobby area.
- 28 Council sought to have a direct access from the street frontage into the office use. Mr Sheppard advised that the provision of access from the adjacent lobby, which also provides access to some services, is a better solution as it maximises the usable area along the frontage within the office. He noted that it would be more important to have direct access if the use was retail rather than office.
- 29 We agree with Council that it is preferable to minimise structures such as substations on the street interface. We also agree that it is preferable to design buildings that have activated streetscapes. During the hearing, the Tribunal discussed the option of relocating the substation to a position behind the office space or within the basement. The applicant submitted that both options had been considered but were not possible. The issue is if we find the level of activation provided by the building appropriate? Having regard to the evidence and our inspection of the site and area, we find the proposed streetscape interface acceptable for the following reasons:
- The provision of a wider footpath on the north side of Queens Avenue is a benefit to not only future residents but more broadly the pedestrian traffic from Henry Street to Auburn Road.
  - We agree with the evidence of Mr Sheppard that the streetscape outcome is improved by the location of apartments designed to have their outlook to the street.
  - Queens Avenue will be activated due to location of the residential lobby.
- 30 Having considered the evidence and inspected examples of other recent developments in Queens Avenue, we find that the proposed activation of this frontage is of high standard for the area and acceptable without change.

## The adequacy of the parking supply

- 31 The proposal includes the standard requirement for parking for the residents and the office use but seeks a dispensation for 5 of the standard 13 space requirement for the number of dwellings. Clause 52.07 allows for the statutory car parking requirement to be reduced. In considering the merits of the reduction the following factors are to be considered; likelihood of multi-purpose trips, car parking demand, availability of public transport, anticipated car ownership and the convenience of cyclist access.

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- 32 The Council submitted that additional visitor parking was required due to the limited parking within Queens Lane and high demand for parking in the area. Specifically, it sought an additional two visitor spaces outside of business hours, which could be shared with the office use.
- 33 Ms Dunstan gave evidence that the provision of eight spaces (0.12 spaces per dwelling) meets the estimate for demand for visitor spaces and that her estimate is conservatively high given that newer data is showing lower demand rates than she recommends.
- 34 Based on the empirical data provided by Ms Dunstan, we are satisfied that the provision of visitor parking as proposed is appropriate. We are satisfied that the demand is met on-site, noting also that there is public transport easily accessible and bicycle parking is provided on site.
- 35 Mr Partos recommended that the resident cyclist parking be relocated from the basement to the ground level behind the office where a storage room is located. Ms Dunstan acknowledged that it may be preferable to locate the cyclist parking at ground level but it would create management issues taking bicycles through the lobby. We are persuaded by Ms Dunstan that there are management issues of relocating the bicycle storage so will retain it as proposed.
- 36 The Tribunal noted that the substituted plans omit the provision of parking spaces for cyclists at ground level. Ms Dunstan recommended that two additional parking loops be provided along the frontage. We have included that as a condition.

## **Whether the development has any adverse impacts on the equitable development rights of the site to its immediate west.**

- 37 The review site is the consolidation of several sites. The adjoining site to the east is currently under construction for an apartment building. To the west is a narrow site accommodating a single storey building.
- 38 Council did not refuse the proposed development on grounds relating to equitable development but it is a matter that is to be addressed. Both Ms Jordan and Mr Sheppard made submissions.
- 39 Ms Jordan noted in her evidence that the proposed building has been set back 5.4 metres from its western site boundary to ensure equitable development rights for 19 Queens Avenue, by providing more than half of the required 9 metre separation between dwellings.
- 40 Mr Sheppard noted that the narrow width of 19 Queens Avenue would require a boundary to boundary development and makes it difficult to develop the site with more than two apartments on each level, with aspects only available to the north and to the south. He also noted that the requirements for parking may limit the site to around 4 to 5 levels and an improved outcome would be achieved if the site was amalgamated with an adjoining property.

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- 41 There have been many Tribunal decisions that have addressed the matter of equitable development and have noted that the principle of 'equitable development' does not mean 'equal development'. A decision *65 Palmerston Crescent Pty Ltd v Port Phillip CC*<sup>6</sup> makes the observation that equitable development rights does not mean that each site must have equal setbacks or that each site has equal development potential. The decision goes on to say, relevantly:

[45] We agree with the proposition that the equitable distribution of development rights does not necessarily mean that equal requirements will apply. While all sites should make a contribution towards setbacks, landscaping and daylight access, whether or not the extent of the contribution is fair or equitable will need to take into account the opportunities and constraints provided by each site. What needs to be achieved is a reasonable contribution from each adjoining site.

- 42 The proposed development is to be constructed to the boundary at the front of the site then set off the boundary by 5.4 metres. The building to the west is a single storey building on a narrow site that due to its size has limited development opportunities. We agree with the evidence of Mr Sheppard that unless this adjoining site is consolidated, its development potential to the full height of the DDO17 may be limited due to the circumstances of the site.
- 43 We are persuaded that the proposed development has responded appropriately to the site to the west and has considered the issue of equitable development.

## Other matters

### Section 173 Agreement

- 44 The Council initially sought a draft condition requiring the creation of a Section 173 Agreement that included an indemnity clause in favour of the Council over the public pedestrian link on the site.
- 45 This was objected to by the Applicant on the basis that it was private land on which the Council had no interest. The Applicant suggested that a management plan that allowed for the link to be closed at certain times such as overnight for security purposes would be more appropriate.
- 46 The Council, upon consideration, conceded that whilst Section 173 Agreements are in place in some locations, they are typically where Council may need to use the link for access to another area. This is not the case here. Accordingly, they did not object to replacing the draft condition with a management plan.
- 47 We agree and have included the provision of a management plan to the satisfaction of the responsible authority as a condition.

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<sup>6</sup> *65 Palmerston Crescent Pty Ltd v Port Phillip CC* 2017 [VCAT] 887.

# VCAT Directed Plans

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## Internal amenity

- 48 Ms Jordan addressed the matter of internal amenity noting that whilst there are some single aspect apartments (facing south), they will receive appropriate daylight, have appropriate sized balconies and have the amenities of a roof terrace and communal space that enhances their amenity. We accept this evidence of Ms Jordan and agree that the proposal provides an acceptable level of internal amenity to future residents.

## **CONCLUSION**

- 49 For the reasons given above, the decision of the responsible authority is set aside. A permit is granted subject to conditions.

Tracey Bilston-McGillen  
**Member**

K L Partenio  
**Member**

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## APPENDIX A – PERMIT CONDITIONS

<b>PERMIT APPLICATION NO:</b>	PP16/00827
<b>LAND:</b>	21 & 23-27 Queens Avenue, Hawthorn

**WHAT THE PERMIT ALLOWS**

Use and development of a ten (10) storey building comprising not more than 66 dwellings, ground floor office space plus three basement levels; and to reduce the residential visitor parking requirement.

In accordance with the endorsed plans:

- The use and development of a ten (10) storey building comprising not more than 66 dwellings, ground floor office space plus three basement levels; and
- To reduce the residential visitor parking requirement.

**CONDITIONS:****Amended plans required**

- 1 Before the development starts, amended plans must be submitted to the satisfaction of the Responsible Authority. When the plans are to the satisfaction of the Responsible Authority they will be endorsed and will then form part of the Permit. The plans must be drawn to scale with dimensions and two (2) copies provided, substantially in accordance with the substituted plans considered in the application – Project No. 216193, drawing nos:

TP00.00-TP00.02, TP01.00 A, TP01.01 B, TP01.02 C- TP01.03C, TP01.04B-TP01.07B, TP01.08-TP01.09, TP02.01B-TP02.05B, TP03.01A, TP03.02B, TP03.03A, TP04.01-TP04.07, TP05.01A, TP05.02-TP05.04, TP05.05A-TP05.06A, TP05.07-TP05.08, TP05.09A, TP05.10-TP05.14, TP05.15A, TP07.01C.

prepared by Rothe Lowman Architects, received by Council on 13 February 2018) but modified to show:

**General:**

- (a) The Queens Avenue footpath, adjacent to the subject site, to be resurfaced with asphalt and bluestone banding with finished surface levels that generally match the existing conditions;
- (b) The finished surface material for the ground floor front setback to consist of asphalt and bluestone bands with finished floor levels that match the resurfaced adjacent footpath;

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- (c) Coloured elevations that are an accurate representation of the proposed schedule of materials and finishes;
- (d) The application of a graffiti-resistant coating to all brick and concrete finishes on the at-grade floors facing Queens Avenue and the VicTrack land;
- (e) Modifications to the schedule of materials and finishes to detail the proposed ground surface materials and levels for the front setback;
- (f) A schedule of materials and finishes, including physical samples of all stone, timber finishes, concretes, brick and metal finishes. The schedule must include details of the size format that the various materials are to be applied and provide further details of the finishes;
- (g) Any modifications to the development necessary as a result of recommendations made in the ESD report required by this permit;
- (h) Any modifications to the proposed development that are identified in the Acoustic report required by this permit as being necessary to achieve compliance with D16 must be shown in the plans;
- (i) Confirmation on the shower typology used for each shower, in accordance with Standard D17;
- (j) Provision of adequate ventilation to the ground floor lobby, in accordance with Standard D18;
- (k) Details of the location of any air conditioning units to the dwellings. In the event of any air conditioning units being located on the apartment balconies or terraces, the area of private open space must meet the standards of D19;
- (l) Enlarged details, at a scale of 1:20 or 1:50, of the substation doors, fire booster cupboard doors, car park entry, residential entry and public pathway entry and exit, showing the materials, finishes and colours. The selected materials must be durable and of a high quality and integrated with the development;

#### **Car parking and accessways:**

- (m) The provision and allocation of car parking in accordance with Condition 43 in this Permit;
- (n) A schedule of bicycle signage to be displayed in accordance with Clause 52.34-5;
- (o) Provision of 20 bicycle parking spaces for use by residents and visitors within the basement, with a minimum of 20% of the bicycle parking spaces to be floor mounted in accordance with the requirements of AS2890.3-2015; and
- (p) Provision of two (2) bicycle parking loops, for use by visitors, on the ground level near the site frontage.

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All to the satisfaction of the responsible authority.

## **Layout and uses not to be altered**

- 2 The layout of the site and the size, levels, design and location of buildings and works and the description of the uses shown on the endorsed plans must not be modified for any reason (unless the Boroondara Planning Scheme specifies that a permit is not required) without the prior written consent of the Responsible Authority.

## **Acoustic report**

- 3 Prior to the endorsement of plans pursuant to condition 1 of this permit, an acoustic report prepared by a suitably qualified person must be prepared to the satisfaction of, and submitted to, the responsible authority for approval. Once approved, the acoustic report will be endorsed and will then form part of the permit. The acoustic report must include recommendations as to how the dwellings in the development will achieve compliance with the internal noise levels contained in Standard D16 of Clause 58. Any modifications to the proposed development that are identified in that report as being necessary to achieve compliance with D16 must be shown in the plans required by condition 1 of this permit.

## **Landscape Plan**

- 4 Concurrent with the endorsement of the plans referred to in Condition 1 of this permit, a Landscape Plan to the satisfaction of the responsible authority must be submitted to and approved by the Responsible Authority. The plan must be drawn to scale with dimensions and three (3) copies provided. When endorsed, the plan will form part of the permit.

## **Completion of landscaping works**

- 5 Landscaping as shown on the endorsed landscape plans must be carried out and completed to the satisfaction of the Responsible Authority prior to the occupation of the development.

## **Landscaping maintenance**

- 6 All landscaping works shown on the endorsed landscape plan/s must be maintained and any dead, diseased or damaged plants replaced, all to the satisfaction of the Responsible Authority.

## **Maintenance of Buildings and Works**

- 7 All buildings and works must be maintained in good order and appearance to the satisfaction of the Responsible Authority.

## **Drainage**

- 8 The land must be drained to the satisfaction of the Responsible Authority.

## **Confirmation of architect team**

- 9 Before the development starts, the Responsible Authority must be provided with evidence to its satisfaction that Rothe Lowman Architects, or an

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alternative architectural firm to the satisfaction of the Responsible Authority, has been engaged as part of the ongoing consultant team to oversee the design and construction to ensure that the design quality and appearance of the approved development is realised.

## Management Plan

- 10 Prior to the occupation of the development, a management plan for the public pedestrian link must be prepared to the satisfaction of, and submitted to, the Responsible Authority for approval. Once approved, the management plan will be endorsed and will then form part of the permit. The management plan must include details of the times during which the link will be open to the public, and any other conditions with respect to its use. The management plan must be complied with at all times unless with the written consent of the responsible authority.

## Conditions required by Public Transport Victoria

- 11 Unless otherwise agreed in writing with Public Transport Victoria and VicTrack, windows and doors must not be placed on the title boundary with the Railway Land and no windows or doors are permitted to open beyond the Railway Land title boundary to the satisfaction of Public Transport Victoria and VicTrack.
- 12 Prior to the commencement of works, detailed construction/ engineering plans and computations for any construction or works likely to have an impact on railway operations or railway infrastructure assets are to be submitted and approved by VicTrack and the Rail Operator. The plans must detail all excavation of the site adjacent to the railway corridor, having any impact on the rail reserve, and ensure compliance regarding building clearances to aerial power lines as per the applicable Victorian Electrical Safety Regulations.
- 13 Unless otherwise agreed in writing with VicTrack permanent or temporary soil anchors must not be installed on railway land.
- 14 Prior to commencement of works, the Rail Operator must be contacted through the email address [metrositeaccess@metrotrains.com.au](mailto:metrositeaccess@metrotrains.com.au) to obtain the Rail Operator's conditions and safety requirements for works on, over or adjacent to railway land.
- 15 Any damage to the Rail Operator's infrastructure as a consequence of the construction works must be rectified to the satisfaction of the Rail Operator at full cost of the Permit holder.
- 16 The Planning Permit holder must take all reasonable steps to ensure that disruptions to train operation within the railway corridor are kept to a minimum during the construction of the development and in compliance with the Rail Operators Safety and Environmental requirements within the Rail Operators construction control and indemnity agreement.

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- 17 Building materials (including glass windows/balcony treatments) must not have an effect on train driver operations along the rail corridor must be non-reflective and avoid using red or green colour schemes.
- 18 No lighting is to be erected that throws light onto the railway tracks or which interferes with the visibility of signals and the rail lines by train drivers.
- 19 No drainage, effluent, waste, soil or other materials must enter or be directed to railway land or stored or deposited on railway land.
- 20 Entry onto railway land is at the discretion of the Rail Operator and is subject to the Rail Operator's Site Access Procedures and conditions.
- 21 The developer shall pay any Rail Operator costs required for the development documentation review or construction works due to the Permit as required by the Rail Operator.
- 22 Access to VicTrack land during construction and for maintenance purposes after completion will require permission from Metro Trains Melbourne and will be subject to both organisation's site access procedures and conditions.

## **External lighting (outdoor communal and publicly accessible areas)**

- 23 Concurrent with the endorsement of the plans referred to in Condition 1 of this permit, a detailed External Lighting Plan must be prepared to the satisfaction of the Responsible Authority. Once satisfactory, such plan will be endorsed and must be implemented to the satisfaction of the Responsible Authority. The plan must provide the following details to the satisfaction of the Responsible Authority:

- (a) Lighting within the outdoor publicly accessible areas of the site;
- (b) Lighting within the outdoor communal areas.

When endorsed, the plan will form part of the permit.

- 24 All outdoor lighting of publicly accessible areas must be designed, baffled and located to prevent light from the site causing any detriment to the locality, to the satisfaction of the Responsible Authority.

## **Waste Management Plan**

- 25 Concurrent with the endorsement of any plans pursuant to Condition 1, a Waste Management Plan, must be prepared to the satisfaction of the Responsible Authority and submitted to the Responsible Authority for approval. Once approved, such Plan must be implemented and complied with at all times to the satisfaction of the Responsible Authority.

## **Maintenance of waste storage area**

- 26 All bins and receptacles used for the collection and storage of solid waste, recyclables and other wastes must be kept in a designated area, to the satisfaction of the Responsible Authority. This storage area must be:
  - (a) Properly paved and drained to a legal point of discharge;

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- (b) Screened from view with a suitably designed enclosure;
- (c) Supplied with adequate hot and cold water; and
- (d) Maintained in a clean and tidy condition free from offensive odours to the satisfaction of the Responsible Authority.

## Hours for waste collection

- 27 Collection of waste must be conducted so as not to cause any unreasonable disturbance to nearby residential properties and may only take place during the following times:

Monday to Friday: 7:00am to 6:00pm

Saturday & Public Holidays: 9:00am to 6:00pm

Sunday: No collection allowed

to the satisfaction of the Responsible Authority.

## Regular waste removal

- 28 All waste material not required for further on-site processing must be regularly removed from the site. All vehicles removing waste must have fully secured and contained loads so that no wastes are spilled or dust or odour is created, to satisfaction of the Responsible Authority.

## Land Suitable for a Sensitive Use

- 29 Prior to the commencement of construction of the building hereby approved:
- (a) A certificate of environmental audit must be issued for the land in accordance with Part IXD of the Environment Protection Act 1970; or
  - (b) An environmental auditor appointed under the Environment Protection Act 1970 must make a statement in accordance with Part IXD of that Act that the environmental conditions of the land are suitable for a sensitive use.
- 30 Notwithstanding the provisions of Condition 28, the following works can be carried out before any necessary Statement of Environmental Audit or a Certificate of Environmental Audit is provided to the Responsible Authority under Condition 28:
- (a) Buildings and works that necessarily form part of the Environmental Audit process; and
  - (b) Buildings and works that the Environmental Auditor engaged by the owners advises must be carried out before a Statement or Certificate of Environmental Audit can be issued.
- 31 Buildings and works carried out before any necessary Statement of Environmental Audit or a Certificate of Environmental Audit is provided to the Responsible Authority must be carried out in accordance with the Works Plan approved by the Environmental Auditor engaged by the owner.

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A copy of the Works Plan must be provided to the Responsible Authority before the commencement of the buildings and works for the purposes of this condition.

- 32 Before the construction of the building hereby approved commences (excluding buildings and works carried out in accordance with a Works Plan approved by the Environmental Auditor engaged by the owner), a copy of any necessary certificate of environmental audit and/or statement, and the complete audit report and audit area plan must be submitted to the Responsible Authority.
- 33 The development and use allowed by this permit must comply with the directions and conditions of any Statement of Environmental Audit issued for the land.
- 34 Prior to the occupation of the dwellings, a letter must be submitted to the Responsible Authority by an Environmental Auditor accredited with the EPA, to advise that all construction and remediation works necessary and required by an environmental audit or statement have been carried out.
- 35 Any handling and disposal of contaminated site soil must be in accordance with the requirements of any statement of environmental audit issued for the land, the requirements of the Environment Protection Authority and the Environment Protection Act 1970.

## Underground infrastructure connections

- 36 Underground infrastructure connections, including electricity, must be available to each premises shown on the endorsed plans before any premises can be occupied, to the satisfaction of the Responsible Authority.

## Driveways and Car Parking areas to be constructed

- 37 Before the use starts the areas set aside for car parking, access lanes and driveways shown on the endorsed plans must be:
  - (a) Constructed;
  - (b) Formed to such levels and properly drained so that they can be used in accordance with the endorsed plans;
  - (c) Surfaced with an all-weather seal coat;
  - (d) Line-marked to indicate each car space and clearly marked to show the direction of traffic along the access lanes and driveways; and
  - (e) Drained,
 to the satisfaction of the Responsible Authority.

## Model of car stacker in the basement car park

- 38 Unless otherwise agreed in writing by the Responsible Authority, the model of car stacker used in the basement car park is to be the *WOHR Combilift 543 Car Stacker*.

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## **Car stackers installed**

- 39 Before the use starts or any building is occupied, car stackers must be installed in accordance with the endorsed plans.

## **Maintenance of car stackers**

- 40 The car stackers must be routinely serviced and maintained to the satisfaction of the Responsible Authority to ensure satisfactory access to all car spaces and to prevent any adverse effect on adjoining land by the emission of noise.

## **Use of car parking spaces and driveways**

- 41 Car spaces, access lanes and driveways shown on the endorsed plan must not be used for any other purpose and may be used by occupants of or visitors to the site and the general public to the satisfaction of the Responsible Authority.
- 42 All vehicles entering and exiting the car park must do so in a forwards direction.

## **Car park control equipment**

- 43 Before the use starts or any building is occupied, details of any car park control equipment (controlling access to and egress from the internal car parks) must be submitted to and approved in writing by the Responsible Authority. These details must include a car park control device which can be accessed by visitors to the development including clear instructions on how to operate any security system, to the satisfaction of the Responsible Authority.

## **Number and allocation of car parking spaces**

- 44 A minimum of 86 car parking spaces must be provided on the land, with car parking spaces allocated in the following manner, unless varied with the written consent of the Responsible Authority:
- (a) Dwelling residents: a minimum of 70 car spaces, including a minimum of:
    - i 1-bedroom dwellings: 1 car space per dwelling
    - ii 2-bedroom dwellings: 1 car space per dwelling
    - iii 3-bedroom and 3+ bedroom dwellings: 2 car spaces per dwelling;
  - (b) Office: a minimum of eight (8);
  - (c) Dwelling visitors: a minimum of eight (8).

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## Visitor parking

- 45 Visitor parking spaces within the development must be:
- (a) Clearly identified by appropriate signage having an area no greater than 0.3m<sup>2</sup>;
  - (b) Line marked to indicate each car space; and
  - (c) Available for visitor usage in accordance with the times/days required by this permit.

## Vehicle crossovers

- 46 Any new vehicle crossover or modification to an existing vehicle crossover must be constructed to the satisfaction of the Responsible Authority.

## Removal of redundant vehicle crossovers

- 47 All disused or redundant vehicle crossovers must be removed and the area reinstated with footpath, kerb and channel to the satisfaction of the Responsible Authority.

## Concealment of Pipes

- 48 All pipes (except down-pipes), fixtures, fittings and vents servicing any building on the site must be concealed in service ducts or otherwise hidden from external view to the satisfaction of the Responsible Authority.

## Plant/equipment or features on roof

- 49 No plant, equipment, services or architectural features other than those shown on the endorsed plans are permitted above the roof level of the buildings without the prior written consent of the Responsible Authority.

## Boundary walls

- 50 The external faces of walls on or facing boundaries are to be cleaned and finished to the same standard as such walls within the development site to the satisfaction of the Responsible Authority.

## Environmentally Sustainable Design Report

- 51 Concurrent with the endorsement of any plans pursuant to Condition 1, an Environmentally Sustainable Design (ESD) Report generally in accordance with the reports submitted with the application, must be submitted which is to the satisfaction of the Responsible Authority. The report must be prepared by a suitably qualified expert and submitted to the Responsible Authority for approval. The report must address ESD principles proposed for the site including, but not limited to, energy efficiency, the use of double glazing (or better) with commercial grade seals for the dwellings, waste and building materials. Any recommended changes to the building must be incorporated into the plans required by Condition 1. Once approved, such a plan must be implemented prior to the occupation of the development and maintained to the satisfaction of the Responsible Authority.

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## Construction Management Plan

- 52 Prior to the commencement of any site works, including demolition and excavation, a Construction Management Plan must be submitted to and endorsed by the Responsible Authority. No works are permitted to occur until the Plan has been endorsed by the Responsible Authority. Once endorsed, the construction management plan will form part of the permit and must be implemented to the satisfaction of the Responsible Authority. The plan must be prepared in accordance with Council's Construction Management Plan Template and provide details of the following:
- (a) Hours for construction activity in accordance with any other condition of this permit;
  - (b) Measures to control noise, dust, water and sediment laden runoff;
  - (c) Measures relating to removal of hazardous or dangerous material from the site, where applicable;
  - (d) A plan showing the location of parking areas for construction and sub-contractors' vehicles on and surrounding the site, to ensure that vehicles associated with construction activity cause minimum disruption to surrounding premises. Any basement car park on the land must be made available for use by sub-constructors/tradespersons upon completion of such areas, without delay;
  - (e) A Traffic Management Plan showing truck routes to and from the site;
  - (f) Swept path analysis demonstrating the ability for trucks to enter and exit the site in a safe manner for the largest anticipated truck associated with the construction;
  - (g) A plan showing the location and design of a vehicle wash-down bay for construction vehicles on the site;
  - (h) Measures to ensure that sub-contractors/tradespersons operating on the site are aware of the contents of the Construction Management Plan;
  - (i) Contact details of key construction site staff;
  - (j) A site plan showing the location of any site sheds, on-site amenities, building waste storage and the like, noting that Council does not support the siting of site sheds within Council road reserves; and
  - (k) Any other relevant matters.

## Hours for Demolition and Construction Work

- 53 All works including earthworks, demolition and construction activity associated with the approved development must take place only during the following hours, except with the prior written consent of the Responsible Authority:

Monday to Thursday: 7:00am to 6:30pm

Friday: 7:00am to 5:00pm

Saturday: 9:00am to 5:00pm

Sunday & Public Holidays: No construction

## Amenity of area

- 54 The amenity of the area must not be adversely affected by the use and development as a result of the:
- (a) Transport of materials, goods or commodities to or from the land; and/or
  - (b) Appearance of any building, works, stored goods or materials; and/or
  - (c) Emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, ash, dust, waste water, waste products, grit or oil; and/or
  - (d) The presence of vermin.

## Permit to Expire

- 55 This Permit will expire if:
- (a) The development does not start within two (2) years of the issue date of this Permit;
  - (b) The development is not completed within four (4) years of the issue date of this Permit.

In accordance with Section 69 of the Planning and Environment Act 1987, a request may be submitted to the Responsible Authority within the prescribed timeframes for an extension of the periods referred to in this condition.

**- End of conditions -**